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Nos. 701, 702, 703 and 744.

IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE NINTH CIRCUIT.

IN THE MATTER OF ARTHUR H. NOYES.

IN THE MATTER OF THOMAS J. GEARY.

IN THE MATTER OF JOSEPH K. WOOD.

IN THE MATTER OF C. A. S. FROST.

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TO

Transcript of Proceedings and Testimony.

The Filmer Brothers Co. Print, 424 Sansome St., S. F.

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VOL. I.

(Pages 1 to 256, inclusive.)

TRANSCRIPT OF PROCEEDINGS AND TESTIMONY.

The Filmer Brothers Co. Print, 424 Sansome St., S. F.

In the United States Circuit Court of Appeals, for the Ninth Circuit.

In the Matter of
ARTHUR H. NOYES.

Affidavit of Erik O. Lindblom.

United States of America,
Northern District of California,
City and County of San Francisco. } ss.

Erik O. Lindblom, being duly sworn, deposes and says:

That the following facts appear of record among the papers, records, and files of this Honorable Court in the cases hereinafter referred to, including the contempt proceedings heretofore had therein.

That at all the times hereinafter mentioned Arthur H. Noyes was, and now is, the duly appointed and acting Judge of the District Court of the United States for the Second Division of the District of Alaska.

That on the 23d day of July, 1900, said Arthur H. Noyes signed an order in the action entitled Chipps vs. Lindeberg et al., the complaint in which was thereafter filed in the office of the Clerk of said Court on the said 23d day of July, 1900, by which order Alexander McKenzie was appointed receiver of the property described in said complaint, which said property consisted principally of a placer mining claim, which the defendants in

said action were actually working at the date of the appointment of said receiver. That in and by the order appointing him receiver said McKenzie was directed to take possession of said mining claim and to work the same, and the defendants were thereby enjoined from interfering with the possession of said receiver. That similar orders were made on said 23d day of July, 1900, under similar circumstances, in four other cases, entitled as follows, namely: Rogers vs. Kjellman, Melsing et al. vs. Tornanses; Comptois vs. Anderson, and Webster vs. Nakkela et al., and immediately after said orders had been made said McKenzie dispossessed defendants respectively of the placer claims described in the complaints in said actions, and taking possession of said mines, worked the same, extracting gold-dust therefrom of the value of more than one hundred thousand dollars ($100,000.) That after said orders were made the defendants in each of the cases presented to said Arthur H. Noyes, Judge of said Court, and to the said Court, a petition for the allowance of an appeal from said order, together with an undertaking on appeal and an assignment of errors; but the said Arthur H. Noyes refused to grant said petition or to allow an appeal from any of said orders.

That thereafter, on the 29th day of August, 1900, the Honorable W. W. Morrow, one of the Judges of this Court, made orders allowing appeals in the said cases, and directing that writs of supersedeas should issue therein out of this Court, directed to the said Alexander McKenzie and the said Arthur H. Noyes, commanding said Noyes to desist from any further proceedings on

account of said orders and commanding said McKenzie to restore to the defendants in said actions all property which the said McKenzie had taken or received as receiver.

That on the 14th day of September, 1900, certified copies of said order allowing said appeal in some of said cases, with other papers, and the said writs of supersedeas in all of said cases, were filed in the office of the clerk of the said District Court, and a certified copy of said writ of supersedeas was served upon the said Arthur H. Noyes, and also upon the said Alexander McKenzie in the cases hereinbefore mentioned, and at the same time demand was made upon said Alexander McKenzie that he return to the defendants in said actions the gold and gold-dust which he had taken from the claims described in the complaints in said actions, which said gold-dust so taken by said McKenzie from said claims and then in his possession was of the value of about two hundred thousand dollars. That said McKenzie refused to deliver said gold-dust, or any part thereof, to the defendants in said actions, or either of them, and refused to comply with said writ of supersedeas; whereupon application was made by the defendants, through their counsel, to the said Arthur H. Noyes for an order directing the enforcement of the writ of supersedeas issued by this Court. That said Arthur H. Noyes then and there declined to make said order, saying that the matter was out of his hands. That on the 15th day of September, 1900, the defendants in said actions, through their counsel, again requested said Arthur H. Noyes to make an order directing the enforce-

ment of said writ of supersedeas, but the said Noyes then and there stated and declared that the order appointing the receiver was not appealable, and that the defendants were not entitled to an appeal.

That on said 15th day of September, 1900, the said Arthur H. Noyes gave instructions to one C. L. Vawter, who was then United States marshal for said District, to place a guard over the vaults containing said gold-dust which had been so taken by said McKenzie from said mines described in the complaints in said actions, and to prevent access thereto by any person. That the object of said order, as complainant is informed and believes, was to defeat the execution of said writ of supersedeas.

That in and by an affidavit made by said McKenzie in contempt proceedings growing out of said cases, it appears that the said Arthur H. Noyes ordered and directed the United States marshal for the District of Alaska to take possession of the portion of said vaults containing the gold and gold-dust held by said McKenzie as receiver, place a guard over it, and not to permit said McKenzie access to said vaults.

That in and by an affidavit made by said Vawter, in the said contempt proceedings, it further appears that on the 15th day of September, 1900, he was ordered by said Arthur H. Noyes to go to the safe deposit building, and to place a guard over the vaults used by McKenzie and not to allow any one, especially McKenzie and the parties interested, to have access to the boxes in which the gold and gold-dust so held by said McKenzie was so

contained until the further order of said District Court. The records herein further show that on the 15th day of September, 1900, said Arthur H. Noyes, in the presence of T. J. Geary, stated to said C. L. Vawter, marshal as aforesaid, to "go ahead and keep possession of the gold-dust, and do not let McKenzie or any of the parties go near it." That at the same time said Arthur H. Noyes said, in the presence of said Geary, that he, said Noyes, did not think the order appointing McKenzie receiver was an appealable order, but that assuming it was, that the only supersedeas that could be effective was the one staying proceedings, and that on the record as it was, there was no justification for defendants demanding the return of the property and that the property (meaning the gold-dust hereinbefore referred to) should be held to meet the final judgment of said District Court.

That on the 16th day of September, 1900, said Arthur H. Noyes stated to T. J. Geary that the only order which he, said Arthur H. Noyes, could make in said cases was one staying proceedings "leaving that property" (referring to the gold-dust aforesaid) "where it was."

That on the same day, to wit, Sunday, the 16th day of September, 1900, said Arthur H. Noyes stated to Geary, as attorney for said McKenzie, that said McKenzie "should turn over the mines and surrender them" (referring to the mines described in the complaints in said actions), "but should retain the gold-dust" (referring to the gold-dust hereinbefore mentioned).

That on the 6th day of October, 1900, in the said case of Robert Chipps vs. Lindeberg et al., the plaintiff, by

his attorneys, Hubbard, Beeman & Hume, made and filed a motion in the District Court of the District of Alaska, Second Division, for an order of said Court restraining the defendants in said cause, their agents and employees, from working the placer mining claim known as "Discovery Claim on Anvil Creek," Cape Nome Mining District, District of Alaska, and also restraining the defendants from taking out of the jurisdiction of said Court any gold taken from said claim; which motion was based upon an affidavit filed therewith, of Robert Chipps, in which it was stated, among other things, that he was the plaintiff in said action; that on or about the 15th day of September, A. D. 1900, the defendants therein took forcible possession of said "Discovery Claim on Anvil Creek" under an alleged writ of supersedeas from the Circuit Court of Appeals for the Ninth Circuit, and had since that date been working said claim and extracting gold and gold-dust therefrom. That thereupon, on said 6th day of October, 1900, said Arthur H. Noyes, as Judge of said Court, made an order in said cause in the words and figures following:

"Upon reading the motion of the plaintiff for an injunction, and the affidavit thereto attached, and the complaint in the above-entitled cause,

"It is ordered that the defendants herein show cause before me, at my chambers in the Court Building, Stedman avenue, Nome, Alaska, on Monday, the 8th day of October, A. D. 1900, at the hour of 9:30 o'clock A. M., why an injunction should not issue restraining you from the further working of the Discovery Placer Mining

Claim, Cape Nome Mining District, District of Alaska, and restraining you from deporting from the jurisdiction of this Court any gold-dust or gold taken out of the said Discovery Placer Mining Claim on Anvil Creek, Cape Nome Mining District, District of Alaska.

ARTHUR H. NOYES,
Judge of the United States District Court, District of Alaska, Division Two.

Dated at Nome, Alaska, this the 6th day of October, 1900. In Chambers."

That thereafter, and on the 10th day of October, A. D. 1900, said Noyes made an order and decision upon said application for an injunction and restraining order in the said entitled cause in the words and figures following, to wit:

"Upon reading the motion of plaintiff for an injunction, order, and the affidavit thereto attached, the complaint, and all papers filed in the above-entitled cause,

It is now ordered that you, Jafet Lindeberg, Erik O. Lindblom, and John Brynteson, and each and every one of you, your agents, servants, and employees and attorneys, and everyone working under the direction of you, your agents, servants, employees and attorneys, be and hereby are enjoined from moving, assisting in moving, causing to be moved, or allowing to be moved, any gold or gold-dust taken out of the said placer mining claim known as 'Discovery Claim on Anvil Creek,' Cape Nome Mining District, District of Alaska, U. S. A., to any place

away from and outside of the Nome Precinct, District of Alaska, U. S. A., and from your possession.

ARTHUR H. NOYES,

Judge of the said District Court of the District of Alaska, Second Division.

Dated October 10th, A. D. 1900. In Chambers."

Complainant charges that the conduct of said Arthur H. Noyes, after the appointment of said receiver and herein described, was for the purpose of interfering with and preventing the enforcement of said writ of supersedeas and rendering the same nugatory and ineffectual.

ERIK O. LINDBLOM.

Subscribed and sworn to before me this 10th day of May, A. D. 1901.

[Seal] F. D. MONCKTON,

Clerk United States Circuit Court of Appeals, for the Ninth Circuit.

[Endorsed]: No. 701. United States Circuit Court of Appeals, for the Ninth Circuit. In the Matter of Arthur H. Noyes. Affidavit of Erik O. Lindblom. Filed May 13, 1901. F. D. Monckton, Clerk.

At a stated term, to wit, the October Term, A. D. 1900, of the United States Circuit Court of Appeals for the Ninth Circuit, held at the courtroom in the city and county of San Francisco, State of California, on the 18th day of May, in the year of our Lord one thousand nine hundred and one. Present: Hon. WILLIAM B. GILBERT, Circuit Judge; Hon. ERSKINE M. ROSS, Circuit Judge; Hon. THOMAS P. HAWLEY, District Judge.

In the Matter of
ARTHUR H. NOYES,
Contempt. } No. 701.

Order to Show Cause.

Whereas, it has been made to appear to this Court by the affidavit of Erik O. Lindblom, on file herein, that Arthur H. Noyes, Judge of the District Court of the United States for the Second Division of the District of Alaska, did, at Nome, Alaska, on or about the 15th day of September, 1900, and also at various times thereafter during said month of September, and the following month of October, act contrary to, and in violation of, the writs of supersedeas and the orders of this Court contained in said writs, which were issued out of this Court on or about the 28th day of August, 1900, in those certain causes herein pending entitled and numbered as follows, to wit: Jafet Lindeberg et al., Appellants, vs. Robert Chipps, Appellee, No. 631; P. H. Anderson, Appellant, vs. O. Jose Comptois, Appellee, No. 632; John

I. Tornanses, Appellant, vs. L. F. Melsing et al., Appellees, No. 634; William A. Kjellman, Appellant, vs. Henry Rogers, Appellee, No. 636, which said writs were directed to the said Arthur H. Noyes, and were personally served upon him on the 14th day of September, 1900:

Now, therefore, on motion of Messrs. E. S. Pillsbury and F. D. Madison, attorneys of this Court, it is ordered that the said Arthur H. Noyes personally appear before this Court, in its courtroom in the city and county of San Francisco, State of California, on Monday, the 14th day of October, 1901, at eleven o'clock in the forenoon of the said day, then and there to show cause, if any he has, why he should not stand committed for contempt of this Court.

And it is further ordered that a certified copy of this order together with a certified copy of the said affidavit of Erik O. Lindblom, be served upon the said Arthur H. Noyes as soon as may be.

I, Frank D. Monckton, Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing to be a full, true and correct copy of an order to show cause entered in the Matter of Arthur H. Noyes, No. 701, as the original thereof remains and appears of record in my office.

Attest my hand and the seal of said Circuit Court of Appeals at San Francisco, California, this 25th day of May, A. D. 1901.

[Seal] FRANK D. MONCKTON,
Clerk.

[Ten Cents U. S. Int. Rev. Stamp. Canceled.]

UNITED STATES MARSHAL'S RETURN.

I hereby return, that I personally served the original writ, of which the within is a certified copy, on the 5th day of July, 1901, on Arthur H. Noyes, by delivering to and leaving with Arthur H. Noyes, said defendant named therein, at Nome, Alaska, in the 9th Circuit, a certified copy thereof, together with a certified copy of the affidavit of Erik A. Lindblom therein mentioned.

San Francisco, Cal., July 29th, 1901.

JOHN H. SHINE,

United States Marshal for the United States Circuit Court of Appeals for the Ninth Circuit.

By William P. Gamble,

Office Deputy.

[Endorsed]: No. 701. United States Circuit Court of Appeals, Ninth Circuit. In the Matter of Arthur H. Noyes. Certified Copy Order to Show Cause, with Return of United States Marshal. Filed July 29, 1901. F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals for the Ninth Circuit.

In the Matter of
ARTHUR H. NOYES, } No. 701.

Answer of Respondent Arthur H. Noyes.

The respondent, Arthur H. Noyes, reserving all objections and exceptions to the form and sufficiency of the affidavit of Erik O. Lindblom, upon which the order to show cause herein is based, as well as to the form and sufficiency of the order, showing cause, in obedience to said order, avers as follows:

That as to all matters and things in any way appearing of record in the causes of action described or referred to in the affidavit of Erik O. Lindblom, he respectfully refers to the records therein.

That concerning the averments of the said affidavit in relation to what appears of record in any other causes, than the causes of action in which the appeals were allowed by this Honorable Court, respondent has no knowledge or information other than as contained in said affidavit.

The respondent admits that he did appoint a receiver in the causes mentioned; that the appointment was made by order; that application, in the causes mentioned, for the appointment of a receiver, was made to him at the time stated in the affidavit, in the cause of Chipps vs.

Lindeberg et al., on a duly verified complaint and bill in equity and the affidavit of the plaintiff, and, in the other causes of action mentioned, on the papers and files in the causes, all of which will appear by reference to the records and files in said causes.

In regard to the filing of the several papers in said causes, respondent has no independent recollection, but believes that all papers were filed on the dates stated in the endorsements of filing on said papers.

Respondent admits that he refused to allow appeals from the order appointing a receiver in the causes mentioned; but he avers that in all his acts and doings in the premises, that he acted judicially, in the exercise of his best judgment and discretion, and not otherwise.

Respondent admits and avers that the writ of supersedeas issued by this Honorable Court, mentioned and described in the affidavit of Lindblom, was served upon him on the fourteenth day of September, 1900, while he was confined to his room by sickness; that no application was made to him for any order related thereto or connected therewith until September fifteenth, 1900; that, on said day, and while respondent was still confined to his room by sickness, he was visited by Mr. Knight, counsel for the defendants in certain of said causes; that it is respondent's recollection that Mr. Knight requested an order requiring the receiver to deliver to the defendants the possession of the gold and gold-dust which had been extracted from the mines, the subjects of the actions, and then deposited in the safety deposit vaults of the Alaska Banking and Safe Deposit Company. And respondent avers that at that time he refused to make the order re-

quested; and respondent avers that at said time he stated to Mr. Knight that he did not believe that he could or should make such an order, that all matters pertaining to the receivership had passed beyond his control, except such orders as he was required to make by the terms of the writ, and that he would enter such orders as soon as possible, and it is respondent's best recollection, that at said time he told Mr. Knight that he did not believe he had the power to make such an order as Mr. Knight required.

It is respondent's recollection that within a few days from that time, Mr. Metson, counsel for certain of the defendants in said causes, appeared in the court over which respondent was presiding, then engaged in the trial of a criminal cause before a jury; that several other attorneys, engaged in different causes, not connected with the causes described in the Lindblom affidavit, were, and had been, making applications to be heard upon various matters and were interrupting and disturbing the cause then on trial; that the district attorney, who was prosecuting in the cause, objected to the interruptions being made; and that respondent stated to counsel that they could not be heard at that time. It is respondent's best recollection that he was not then informed concerning the nature of the motions to be made by Mr. Metson or whether it had relation to any of the causes described in the Lindblom affidavit; and if, in fact, Mr. Metson intended to move in any of the causes at that time, that, together with the request of Mr. Knight hereinbefore set forth, constitutes the only applications or attempted applications made to this respondent for any order upon the receiver directing him

to deliver the possession of the gold and gold-dust to the defendants.

Respondent denies that either to the said Knight or to the said Metson, or to any person, either in words or substance, he denied the right of this Honorable Court to allow an appeal or appeals in the causes described in the Lindblom affidavit, and denies that he ever, either to the said Knight or to the said Metson, or to any other person, did state as a ground for refusal of the order requiring the receiver to deliver the possession of the gold and gold-dust to the defendants, that the order appointing the receiver was not appealable or that defendants were not entitled to an appeal; respondent avers, however, that it was his judgment and opinion that the order or orders appointing the receiver were not appealable, and it was his opinion and judgment that this Court, upon hearing the appeals in the causes, would so determine.

It is the best recollection of respondent that at the time when the application for an order was sought to be made by Mr. Metson, as aforesaid, nothing was said other than as substantially hereinbefore set forth.

Respondent states that it may be true that in a general conversation with Mr. Knight he might have expressed the opinion (for, at that time, he fully entertained it) that the receivership orders were not appealable, and that this Honorable Court would so determine. As to whether he did so express such opinion on the occasion referred to, he does not remember; but. he avers, that if such remarks were made, they were not made, and, were not, and could not be understood as being, the ground of refusal of the order sought, for, at that time, the appeal,

in some of the cases at least, had already been allowed by this Honorable Court.

That on the said fourteenth day of September, 1900, as hereinbefore stated, a writ of supersedeas had been served upon respondent; which, as respondent then believed, and as he still believes, ousted this respondent and the Court over which he presided from making any order or orders in the premises concerning the receivership proceedings, save such only as were required by the terms of the writ, which this respondent made and entered with all convenient speed, in obedience to and in aid of the said writ and of the jurisdiction of this Honorable Court.

Respondent avers that as he now remembers, that at some time prior to the fourteenth day of September, 1900, a stipulation or agreement had been entered into between the parties interested in the preservation of the gold-dust in the safe deposit vaults of the Alaska Banking and Safe Deposit Company, and a request made that a military guard be placed over the same, the amount of money being large and, as was represented and believed, the vaults not sufficiently secure; that such military guard was the only guard placed over the gold-dust so deposited, unless pursuant to two certain letters, bearing date the fifteenth day of September, respectively, 1900, one addressed to Marshal C. L. Vawter, and the other addressed to Major Van Orsdale, in command of the military forces at Nome, which letters were handed to the parties to whom they were addressed, respectively, on that day.

Respondent further avers that at some time prior to the fourteenth day of September, an order had been made and filed in this cause, or a general order of the

court had been made, that no gold-dust should be withdrawn from the safety deposit vaults in any case without an order of Court and after notice to both parties and opportunity to both parties to be heard.

Respondent further avers that on the fifteenth day of September, 1900, it was represented to respondent, and he verily believed, that a large concourse of people had assembled in and around the bank building of the Alaska Banking and Safe Deposit Company, that they were armed and threatening violence, that the danger was menacing, that threats had been made to break into the bank building; and, under the conditions and circumstances then existing this respondent dictated, signed, and caused to be delivered the letters hereinbefore mentioned.

Respondent, in that behalf, further avers that he does not believe that said Marshal Vawter understood or believed, and, indeed, he could not understand or believe, that said letter was meant or intended in any way or manner to vex or harass or disturb the jurisdiction of this Honorable Court or to prevent or hinder or delay the execution of its process, or to prevent or hinder the said receiver, McKenzie, from delivering the gold and gold-dust contained in said vaults.

This respondent never in any manner, at any time or place, directly or indirectly, authorized or required the United States marshal to take possession of the portion of the vaults containing the gold-dust and gold placed there by McKenzie as receiver, or to place a guard over it or to prevent said McKenzie access to said vaults, other than hereinbefore stated; and he denies that he ever at any time ordered the said Vawter to go to the safe deposit

building and to place a guard over the vaults used by McKenzie, and not to allow anyone, especially McKenzie, or the parties interested, to have access to the boxes in which the gold and gold-dust so held by McKenzie was contained, until the further order of said District Court, other than as hereinbefore stated.

Respondent denies that on the fifteenth day of September, 1900, in the presence of T. J. Geary, or in the presence of any other person, or at all, he stated to the said C. L. Vawter to go ahead and keep possession of the gold-dust, and not let McKenzie or any of the parties go near it, or that he ever used any words of similar import or meaning.

Respondent denies that on the fifteenth day of September, 1900, or at any time, he said in the presence of T. J. Geary, or of any person, that he, respondent, did not think the order appointing McKenzie was an appealable order, but, assuming that it was, the only supersedeas that could be effective was the one staying proceedings, and that, on the record as it was, there was no justification for defendants demanding the return of the gold and gold-dust hereinbefore referred to, and that the gold and gold-dust should be held to meet the final judgment of said District Court.

Respondent avers, however, that on the fifteenth day of September, 1900, as hereinbefore stated, he was of the opinion that the order appointing McKenzie receiver was not an appealable order, and was also of the opinion that this Honorable Court would so hold on the final hearing of the appeal; and he states that he may have, in the

hearing of said Geary or in a conversation with said Geary or some other persons, so stated.

Respondent denies that on the sixteenth day of September, 1900, he stated to T. J. Geary that the only order which he could make in said causes was one staying proceedings, leaving that property, referring to the gold-dust, where it was. Respondent avers, in that behalf, that on said day it was his opinion that the only order which he could make in said causes, concerning the said receiver and receivership proceedings, was the order or the orders required by the writ of supersedeas and in full obedience thereto and in compliance therewith. Respondent further avers that he did not think it devolved upon him to interpret the writ of supersedeas so far as it pertained to the duties of, or directions to, the receiver, Alexander McKenzie; that the writ of supersedeas required respondent to stay all proceedings in the receivership matter and to desist and refrain from any further acts in connection therewith, and that respondent, in so doing, was complying fully with the requirements of this Honorable Court; and respondent never at any time believed that it was proper for him to make an order requiring McKenzie to deliver the possession of the property or any part or portion thereof. It is possible that in a private conversation with the said T. J. Geary, this respondent may have stated that he believed the only order or orders he could make were the ones required by the writ of supersedeas staying proceedings.

Respondent denies that on the sixteenth day of September, 1900, or at any time, he stated to said Geary, either as attorney for the receiver or at all, that McKenzie

should retain the gold-dust, or any words of similar import or meaning.

Respondent admits that on the sixth day of October, 1900, application was made to the Court presided over by him for an order restraining the defendants in the action of Chipps vs. Lindeberg, from working and mining the claim described in the pleadings in said cause and restraining the defendants from taking out of the jurisdiction of that Court any gold taken from said claim; that he made an order therein as set forth in the affidavit of Lindblom; and admits that on the tenth day of October, 1900, and upon the hearing of such application in the Court presided over by this respondent, the order set forth in the said affidavit, restraining the defendants from moving or allowing to be moved any gold or gold-dust taken out of the said mining claim to any place away from and outside of the Nome Precinct, District of Alaska, or from the possession of the defendants, was made. Respondent avers that at the time of the granting of said orders the only appeal taken or allowed was an appeal from the order appointing the receiver and restraining the defendants from working said claim; that he conceived and believed, as to all matters embraced in the said appeal, he had no power to make any orders, save only the orders so made and entered by him staying proceedings; but it was his full conviction that as to matters embraced in the last order named, to wit, to prevent the gold-dust from being removed entirely beyond the jurisdiction, it was his duty, upon proper application, and a full showing, to restrain the defendants from removing the gold-dust from beyond the jurisdiction.

Respondent further avers that ever after the reception of the order and writ of supersedeas from this Honorable Court, he believed that he had no power to make orders enjoining the defendants from working and mining the claim, the subject of the action, or extracting the gold-dust therefrom, but he did believe that upon proper application being made, and without successful defense thereto, and where the danger was apparent, that it did lie in the power of the Court to enjoin and restrain the defendants in the cause in question from deporting or carrying away beyond the district and beyond the jurisdiction the gold-dust extracted from the mines in question, before the trial and determination of the action.

Respondent further avers that in each and every of the matters pretended to be set forth and described in the affidavit of the said Lindblom, he acted in good faith and with what he considered to be due regard to the rights of the parties and in full and complete respect for the authority, orders, and writs of this Honorable Court.

Respondent denies that either by his conduct or by any act or omission on his part he sought to interfere with or did interfere with or prevent the enforcement of the said writ of supersedeas, or sought to or did render the same nugatory or ineffectual; but that, on the contrary, every act performed by him after the appointment of the receiver was performed in the exercise of his best judgment and judicial discretion and with due respect to this Honorable Court.

Wherefore, the respondent prays that he be examined personally in the presence and hearing of this Honorable Court, touching the matters and things charged against

him, and that he be adjudged not guilty of the offenses charged.

ARTHUR H. NOYES,
Respondent.

P. J. McLAUGHLIN,
Counsel for Respondent.

United States of America,
State and Northern District of California. } ss.

Arthur H. Noyes, being first duly sworn, on his oath says that he is the respondent in this proceeding; that he has read the foregoing answer and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and that as to those matters he believes it to be true.

ARTHUR H. NOYES.

Subscribed and sworn to before me this 17 day of October, 1901.

[Seal] F. D. MONCKTON,
Clerk United States Circuit Court of Appeals for the Ninth Circuit.

[Endorsed]: No. 701. In the United States Circuit Court of Appeals for the Ninth Circuit. In the Matter of Arthur H. Noyes. Answer. Filed October 17, 1901. F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals, Ninth Circuit.

In the Matter of
THOMAS J. GEARY.

Affidavit of P. H. Anderson.

United States of America,
Northern District of California,
City and County of San Francisco. } ss.

P. H. Anderson, being duly sworn, deposes and says:

That on the 23d day of July, 1900, complaints were filed in the office of the clerk of the District Court of the United States, Second Division, District of Alaska, in four certain actions entitled, Melsing vs. Tornanses, Rogers vs. Kjellman, Comptois vs. Anderson, and Chipps vs. Lindeberg et al.

That on said 23d day of July, 1900, Arthur H. Noyes, as Judge of said Court, made orders wherein and whereby he appointed Alexander McKenzie receiver to take charge of and work certain mining claims described in the complaints in said actions; and enjoining and restraining the defendants from in any wise interfering with said property of which the said McKenzie was by said orders appointed receiver.

That thereafter, on the 10th day of August, 1900, the said Arthur H. Noyes, acting as Judge of said District Court, made an order in each of said actions, continuing

in force the orders made on said 23d day of July, 1900, and conferring further and additional powers upon said Alexander McKenzie.

That thereafter and within the time allowed by law, the defendants in said actions petitioned said Arthur H. Noyes and the said District Court over which said Arthur H. Noyes presided, for an order allowing an appeal from the said orders appointing a receiver and enjoining and restraining defendants, but the said Arthur H. Noyes and the said District Court over which said Arthur H. Noyes presided, denied said petition, and refused to allow defendants to appeal from said orders, or any part thereof.

That thereafter, on the 29th day of August, 1900, the Honorable W. W. Morrow, one of the Judges of this Court, made an order allowing an appeal from the order so made in each of said actions, and directed a writ of supersedeas to issue out of this Court, commanding the said Arthur H. Noyes to refrain and desist from any further proceedings on said order appointing a receiver, and directing and commanding the said Alexander McKenzie to return and restore to the defendants in said actions all of the property of which he had taken possession as receiver, and a writ of supersedeas was on said day issued out of this Court in each of said actions, in accordance with the order of said Honorable W. W. Morrow, and on the same day, to wit, the 29th day of August, 1900, a citation in each of said cases was issued out of and under the seal of this Court directed to the said District Court of the United States, Second Division, District of Alaska.

That on the 14th day of September, 1900, said original citation in said cases was filed in the office of the clerk of the District Court of the United States Second Division, District of Alaska, and on the same day certified copies of the order allowing the appeal and of the writ of supersedeas were also filed in the office of the clerk of said Court.

That on the same day, to wit, the 14th day of September, 1900, a certified copy of said writ of supersedeas was served upon said Arthur H. Noyes and a certified copy was served upon said Alexander McKenzie in each of said cases.

That on the said 14th day of September, 1900, and at all the times hereinafter mentioned, Thomas J. Geary was the attorney for said Alexander McKenzie. That on the said 14th day of September, 1900, said Thomas J. Geary was and is now a member of the bar of this Court.

That before the said 14th day of September, 1900, said Alexander McKenzie had taken from the mining claims described in the complaints in said actions a large amount of gold-dust, and on said 14th day of September, 1900, had in his possession gold-dust which had previously been taken from said claims, of the value of about two hundred thousand dollars.

That on the said 14th day of September, 1900, and on the 15th and 16th days of September, 1900, and after the service on said McKenzie of a certified copy of said writ of supersedeas in each of said cases, and after demand had been made upon said McKenzie that he comply with said writ of supersedeas and return to the defendants the property which he had taken as receiver,

and particularly the gold-dust then in his possession, said Geary advised said McKenzie that the only supersedeas which could issue in said actions was one directing and staying further proceedings, leaving the property in the condition in which it was at the time the writ was issued, and expressly advised the said McKenzie not to turn over said gold-dust, or any part thereof, to the defendants in said actions.

That the said Geary at the same time advised said McKenzie that the orders from which defendants had appealed and from which the Honorable W. W. Morrow, one of the Judges of this Court, had allowed appeals, were not appealable and that for that reason said McKenzie should not obey said writ of supersedeas.

That said Geary further advised said McKenzie that said orders were not appealable and that the writ of supersedeas issued under the order of said Honorable W. W. Morrow was void.

That the said Thomas J. Geary further advised said McKenzie that notwithstanding said writ of supersedeas, he, said McKenzie, was not compelled to turn over said gold-dust.

That on the first day of October, 1900, it having been made to appear to this Court that the said McKenzie refused to obey said writ of supersedeas or to turn over said property, or any part thereof, to the defendants, this Court made an order directing the United States marshal for the Northern District of California to proceed to Nome, Alaska, and enforce said writ of supersedeas. That the said marshal directed two of his deputies to proceed to Nome to enforce said writ. That said

deputies arrived in Nome on the 15th day of October, 1900, with a certified copy of the order made by this Court directing the United States marshal for the Northern District of California to enforce said writ of supersedeas.

That the said Thomas J. Geary on or about the 15th day of October, 1900, and after demand had been made upon said McKenzie by said marshal that he comply with said order and turn over to the defendants the gold-dust in his possession, advised said McKenzie that the said order made by this Court on the first day of October, 1900, was void, and further advised said McKenzie not to obey said order.

That said McKenzie did not obey or comply with said writ of supersedeas, nor did he obey or comply with the order made by this Court on the first day of October, 1900.

That as complainant is informed and believes, and so alleges, the conduct of said Thomas J. Geary as herein described was for the purpose of interfering with and preventing the enforcement of said writ of supersedeas and rendering the same ineffectual.

P. H. ANDERSON.

Subscribed and sworn to before me this 10th day of May, A. D. 1901.

[Seal] F. D. MONCKTON,
Clerk United States Circuit Court of Appeals for the Ninth Circuit.

[Endorsed]: No. 702. United States Circuit Court of Appeals for the Ninth Circuit. In the Matter of Thomas J. Geary. Affidavit of P. H. Anderson. Filed May 13, 1901. F. D. Monckton, Clerk.

At a stated term, to wit, the October Term, A. D. 1900, of the United States Circuit Court of Appeals for the Ninth Circuit, held at the courtroom in the city and county of San Francisco, State of California, on the 18th day of May, in the year of our Lord one thousand nine hundred and one. Present, Hon. WILLIAM B. GILBERT, Circuit Judge; Hon. ERSKINE M. ROSS, Circuit Judge; Hon. THOMAS P. HAWLEY, District Judge.

In the Matter of
THOMAS J. GEARY,
Contempt. } No. 702.

Order to Show Cause.

Whereas, it has been made to appear by the affidavit of P. H. Anderson, on file herein, that Thomas J. Geary did, at various times and places since the 13th day of September, 1900, advise Alexander McKenzie to disobey and refuse to comply with those certain writs of supersedeas and the orders of this Court contained in said writs which were issued out of this Court on or about the 28th day of August, 1900, in those certain causes herein pending entitled and numbered as follows, to wit: Jafet Lindeberg et al., Appellants, vs. Robert Chipps, Appellee, No. 631; P. H. Anderson, Appellant, vs. O. Jose Comptois, Appellee, No. 632; John I. Tornanses, Appellant, vs. L. F. Melsing et al., Appellees, No. 634; William A. Kjellman, Appellant, vs. Henry Rogers, Appellee, No. 636;

and furthermore, that the said Thomas J. Geary has, since the first day of October, 1900, advised the said Alexander McKenzie to disobey and refuse to comply with those certain orders which were issued out of this court or or about the first day of October, 1900, in said causes:

Now, therefore, on motion of Messrs. E. S. Pillsbury and F. D. Madison, attorneys of this Court, it is ordered that the said Thomas J. Geary personally appear before this Court, in its courtroom in the city and county of San Francisco, State of California, on Monday, the 14th day of October, 1901, at eleven o'clock in the forenoon of the said day, then and there to show cause, if any he has, why he should not stand committed for contempt of this Court;

It is further ordered that a certified copy of this order, together with a certified copy of the said affidavit of P. H. Anderson, be served upon the said Thomas J. Geary as soon as may be.

I, Frank D. Monckton, Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing to be a full, true, and correct copy of an order to show cause entered in the matter of Thomas J. Geary, No. 702, as the original thereof remains and appears of record in my office.

Attest my hand and the seal of said Circuit Court of Appeals at San Francisco, California, this 25th day of May, A. D. 1901.

[Seal] F. D. MONCKTON,
Clerk.

[Ten Cents U. S. Int. Rev. Stamp. Canceled.]

UNITED STATES MARSHAL'S RETURN.

United States Marshal's Office,
Northern District of California.

I hereby return, that I received the within certified copy of order on the 25th day of May, 1901, and personally served the original order herein on the 25th day of May, 1901, on Thomas J. Geary, by delivering to and leaving with said Thomas J. Geary, said defendant named therein, at the city and county of San Francisco, in said District, a certified copy thereof, together with a certified copy of the affidavit of P. H. Anderson attached thereto.

San Francisco, May 27, 1901.

JOHN H. SHINE,
United States Marshal.

[Endorsed]: No. 702. In the United States Circuit Court of Appeals for the Ninth Circuit. In the Matter of Thomas J. Geary. Certified Copy of Order to Show Cause with Return of Service. Filed May 28th, 1901. F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals, Ninth Circuit.

In the Matter of
THOMAS J. GEARY,
For Contempt.
No. 702.

Demurrer of Thomas J. Geary.

The demurrer of Thomas J. Geary, respondent in the above-entitled proceeding, to the complaint of P. H.

Anderson, filed herein on the 13th day of May, 1901, respectfully shows:

This defendant, by protestation, not confessing or acknowledging all or any of the matters and things, or all or any of the matters or things, in said complaint to be true, in such manner and form as the same are therein set forth and alleged, demurs thereto, and for cause of demurrer shows:

1. That the complainant herein has not in and by said complaint stated facts sufficient to show that this respondent is or was at all or any of the times specified in said complaint, or at any time or at all, guilty of acts, or of any act, constituting a contempt of this Honorable Court. And respondent in this behalf specifies the following particulars in which said complaint does not state facts sufficient to show that this respondent has committed a contempt of this Honorable Court:

(a) In this, that in and by said complaint said complainant seeks to charge this respondent with a criminal offense, and that said complaint, in a substantial and material particular, purports to be based upon the information and belief only of said complainant.

(b) In this, that said complaint, in the body of which this respondent is alleged to have given certain advice to one Alexander McKenzie as "the attorney for said Alexander McKenzie," with respect to the validity of certain orders and writs of this Court, and concerning the conduct of said McKenzie with respect to said orders and writs of this Court, and further alleges that the conduct of this respondent as in said complaint described "was

for the purpose of interfering with and preventing the enforcement of said writ of supersedeas and rendering the same ineffectual," does not allege nor state that the advice given by respondent to said McKenzie, as alleged in said complaint, was not given in good faith, nor that said advice so given by this respondent to said McKenzie was not in accordance with the honest opinion and judgment of this respondent, as the attorney for said McKenzie, with respect to the validity of said orders and writs and as to the duty and rights of said McKenzie thereunder, and does not allege that this respondent, in giving such advice to said McKenzie, intended in any manner wrongfully or unlawfully to interfere with or prevent the enforcement of any of the orders or writs of this Court mentioned in said complaint, nor to render the same or any thereof ineffectual.

Wherefore respondent prays that the citation heretofore issued in this proceeding requiring him to appear and answer for said alleged contempt of Court be discharged and said proceeding dismissed.

JAMES G. MAGUIRE,
Counsel for Respondent.

CERTIFICATE OF COUNSEL.

I hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

JAMES G. MAGUIRE,
Counsel for Respondent.

Service, by copy, of the within demurrer is hereby admitted this 17th day of October, 1901.

[Endorsed]: No. 702. In the United States Circuit Court of Appeals, Ninth Circuit. In the Matter of Thomas J. Geary, for Contempt. Demurrer of Thomas J. Geary. Filed October 17, 1901. F. D. Monckton, Clerk. James G. Maguire, Parrott Building, San Francisco, Cal., Counsel for Respondent.

At a stated term, to wit, the October term, A. D. 1901, of the United States Circuit Court of Appeals for the Ninth Circuit, held at the courtroom, in the city and county of San Francisco, on Thursday, the seventeenth day of October, in the year of our Lord one thousand nine hundred and one. Present: The Honorable WILLIAM B. GILBERT, Circuit Judge; Honorable ERSKINE M. ROSS, Circuit Judge; Honorable WILLIAM W. MORROW, Circuit Judge.

In the Matter of
THOMAS J. GEARY. } No. 702.

Order Overruling Demurrer of Respondent Geary.

A demurrer of the respondent herein having been this day filed, and Mr. James G. Maguire, counsel for the respondent, and Mr. E. S. Pillsbury, amicus curiae, having been heard—

It is ordered that said demurrer be, and the same is hereby, overruled. To which ruling of the Court Mr. Maguire saved and was allowed an exception.

In the United States Circuit Court of Appeals, Ninth Circuit.

In the Matter of
THOMAS J. GEARY,
For Contempt.
} No. 702.

Answer of Respondent Thomas J. Geary.

Now comes the respondent, Thomas J. Geary, in the above-entitled proceeding, and saving and reserving all objections heretofore made in his demurrer to the complaint herein, and answering under protest the order to show cause why he should not be punished for contempt of this Honorable Court, respectfully makes answer as follows:

I.

Denies that at various or any times and places, or at any time or place since the 15th day of September, 1900, or at any other time or at all, respondent advised Alexander McKenzie to disobey and refuse to comply, or to disobey or to refuse to comply, with those certain writs of supersedeas, or any writ of supersedeas, and the orders, or any order, of this Court, contained in said writs, or in any writ, issued out of this court on or about the 28th day of August, 1900, or at any other time or at all, in those certain causes pending herein entitled and numbered as follows, to wit:

Jafet Lindeberg et al., Appellants, vs. Robert Chipps, Appellee, No. 631; P. H. Anderson, Appellant, vs. O. Jose

Comptois, Appellee, No. 632; John I. Tornanses, Appellant, vs. L. F. Melsing et al., Appellees, No. 634; William A. Kjellman, Appellant, vs. Henry Rogers, Appellee, No. 636; or in any causes or cause whatever; and denies that this respondent has, since the first day of October, 1900, or at any other time or at all, advised the said Alexander McKenzie to disobey and refuse to comply with, or to disobey or to refuse to comply with, those certain or any orders or order issued out of this court on or about the first day of October, 1900, or at any other time, or at all, in said causes:

And in this behalf respondent alleges that his only connection with said causes, or any of them, or with said Alexander McKenzie, in or with respect to said causes, or any of them, was as attorney and counsel for said McKenzie, as the duly appointed, qualified, and acting receiver of the District Court of the United States, Second Division, District of Alaska, where said several actions were pending, and from which Court said actions, and each and all of them, were taken to this Honorable Court on appeal; that while acting as the attorney and counsel for said McKenzie, as receiver as aforesaid, and not otherwise, this respondent was, on the 14th day of September, 1900, asked by said McKenzie to examine certain writs of supersedeas purporting to have been issued by the Clerk of this Honorable Court in certain of the above-mentioned actions, and to advise him, the said McKenzie, as to the validity, scope, and effect of said writs and as to his rights and duties thereunder.

That this respondent, as such attorney for said McKenzie, did, to the best of his ability and conscientiously

and honestly, make an examination of said writs and of all proceedings in said causes in so far as such proceedings were accessible to him in the city of Nome, in said Second Division, District of Alaska, where this respondent and said McKenzie then were, and did in like manner, to the best of his ability and conscientiously and honestly, to the extent to which the statutes and authorities governing the questions thus submitted to him were available in said District of Alaska, investigate the law upon the subject, and did, as a result of such investigation, reach the conclusion that said writs and each of them were and was invalid, and thereupon, in accordance with what he, the said respondent, understood and believed to be his duty as an attorney and counsel to his said client, and not otherwise, and without any intent or purpose to be disrespectful, or to act in any manner disrespectfully to this Honorable Court, or to advise or counsel or encourage the disobedience or evasion of said or any writs or orders, or writ or order, of this Honorable Court, and did state to said McKenzie the conclusion and judgment which he, the said respondent, had as aforesaid reached concerning the validity of said writs and orders, namely, that said writs and orders were, and that each of them was, invalid, and did thereupon, on said 14th day of September, 1900, in accordance with his honest and unprejudiced judgment as the attorney and counsel for said McKenzie, and not otherwise, advise the said McKenzie that said writs were, and that each of them was, in the opinion of this respondent, void; but did then and there advise the said McKenzie to immediately, on said 14th day of Sep-

tember, 1900, comply with the terms of certain orders of Hon. W. W. Morrow, one of the Judges of this Honorable Court, allowing appeals from the orders appointing said McKenzie receiver in said several actions, to cease working the mines in litigation in said actions, to withdraw all of his miners and other employees from said mines, and to cease all further operations as such receiver; and this respondent did then and there state to the said McKenzie that he would require additional time to determine the rights and duties of said McKenzie as such receiver with respect to certain gold, gold-dust, and money which had come into the possession of said McKenzie as such receiver;

That respondent did diligently and carefully and conscientiously and honestly examine and investigate all the laws and authorities available to him bearing upon the questions so submitted to him as such attorney and counsel by said McKenzie, and did prepare for said McKenzie a written opinion setting forth the results of his said investigation of said questions—a copy of which said written opinion of this respondent is hereto annexed, marked Exhibit "A," and made a part hereof.

That said written opinion (Exhibit "A") was not completed, nor ready for delivery to said McKenzie, until about 6 o'clock in the afternoon of the 15th day of September, 1900; that in the meantime, and prior to the completion of said written opinion (Exhibit "A"), the United States marshal for the District of Alaska, acting under orders of the Judge of the District Court of said Second Division, District of Alaska, calling to his aid

the military forces of the United States of America, had taken possession of the vault in which said McKenzie had deposited the gold, gold-dust and money, which had come into his hands as such receiver.

That the said orders of said District Judge directing the said United States marshal for said District of Alaska to take possession of said vault and of said gold, gold-dust and money contained therein, were made without the procurement, suggestion, or knowledge of this respondent.

That this respondent never gave to said McKenzie, either orally or in writing, any opinion or advice concerning the said writs or orders, or any of them, or concerning his rights or duties thereunder, except as hereinbefore stated, namely, said oral opinion and advice given to him as hereinbefore stated on said 14th day of September, 1900, and said written opinion (Exhibit "A") hereto attached.

II.

Further replying, respondent denies that on the 14th day of September, 1900, the original citation, or any copy of the order allowing the appeal in the case of Chipps vs. Lindeberg or Comptois vs. Anderson, was on file in the clerk's office in the District Court, Second Division of Alaska.

III.

Denies that on the 14th day of September, 1900, or at any time prior to the 17th day of November, 1900, this respondent was a member of the bar of this Honorable Court or an attorney or officer of said Court.

IV.

Respondent admits that on the 14th and 15th days of September, 1900, he advised said McKenzie that the orders from which defendants had appealed in said actions, and each of them, were not appealable orders, for the reasons set forth in the opinion (Exhibit "A") prepared by respondent for said McKenzie as hereinbefore stated.

And in this behalf respondent alleges that at the time of giving said advice to said McKenzie he had no knowledge that the amendment to the statutes of the United States allowing appeals from orders appointing receivers in such actions had been enacted, no copy of such amendment or of the statues containing the same having then reached said City of Nome in said District of Alaska.

V.

Respondent admits that on the 14th and 15th days of September, 1900, he advised said McKenzie that said orders were not appealable, and that the writs of supersedeas issued in said actions by the clerk of this Honorable Court on the 28th and 29th days of August, 1900 [and under the order of said Hon. W. W. Morrow, as this respondent has since learned], were, and each of them was, void.

But in this behalf respondent alleges that on said 14th and 15th days of September, 1900, he had no knowledge or notice of any kind that said writs of supersedeas, or any of them, were or was issued under or in obedience to or pursuant to any orders or order of said Hon. W.

W. Morrow, or that said Hon. W. W. Morrow, one of the Judges of this Court, had made any order or orders other than the orders allowing appeals in said actions.

And respondent further alleges that he had no knowledge or notice that any orders or order, other than the orders allowing said appeals in said actions, had been made by said Hon. W. W. Morrow directing the issuance of the writs or any writ of supersedeas in said actions or any of them until after his return from said City of Nome to the City and County of San Francisco on the —— day of November, 1900.

And further in this behalf alleges, upon his information and belief, that none of the attorneys or parties connected with any of said actions had any knowledge or notice of the making of such orders or of any such order until after said attorneys and parties had returned from said City of Nome to the City and County of San Francisco on or about the —— day of November, 1900.

VI.

Respondent denies that on the 15th day of October, 1900, or at any other time or at all, he advised said McKenzie to disobey or refuse to comply with the orders of this Honorable Court made on the first day of October, 1900, in the cases hereinbfore mentioned requiring said McKenzie to turn over to the defendants the gold-dust in his possession; and further alleges that said McKenzie did not request of respondent any opinion or advice as to his duties under said writs. Respondent believing, for the reasons hereinbefore stated, that no appeals had been taken in said actions, considered

said writs of October 1st as being void, and so stated to said McKenzie, but did not advise said McKenzie not to obey said orders of October 1st, nor to disobey any of said orders, nor to place any obstacle in the way of the enforcement of said orders or any of them by the deputy marshals of this Honorable Court, but on the contrary would, on said day, have advised said McKenzie, notwithstanding his belief that said orders were void, to obey the same as far as was in his power, and to aid and assist said marshals in the enforcement of said orders.

VII.

Respondent denies that his advice and conduct, or his advice or conduct, in the matters, or in any of the matters, set forth or described in the complaint herein, was for the purpose of interfering with or of preventing the enforcement of said writs of supersedeas, or of any writ of supersedeas, or of any orders or order made by this Honorable Court, or for the purpose of rendering said writs or writ, or orders or order, or any writ or order of this Honorable Court, ineffectual.

And in this behalf respondent alleges that his sole and only purpose in all of said matters, and in the advice given and in his conduct in said matters, was to conscientiously and in good faith discharge his duties as attorney to his client by giving to said client his honest opinion upon the legal questions submitted to him by such client after careful investigation of the questions submitted to him as such attorney, and at all times this respondent believed that in the opinions which he gave to said client he correctly stated the law, and was

sustained by the authorities cited in support of such opinions and advice.

VIII.

Respondent further alleges that he was not employed or retained by said McKenzie as his attorney or counsel, either individually or as receiver in said actions, until on or about the 15th day of August, 1900, and that prior to said 15th day of August, 1900, respondent was not employed or retained as the attorney for said McKenzie in any capacity, either individually or as receiver in said actions, and had no connection or relation with any of said actions or with any of the parties thereto, and further alleges that he has never at any time had any interest in the subject matter of any of said actions nor any interest in the success of any of the parties plaintiff or defendant in any of said actions, and that his relation to said actions has been solely as the attorney for said McKenzie as receiver therein, and not otherwise.

IX.

That it was never the intention of this respondent at any time to exhibit to or be guilty of any contempt of this Honorable Court or any of the Justices thereof, nor to disobey or advise disobedience of any of its lawful orders or writs.

Wherefore respondent prays that the citation heretofore issued herein be quashed and the respondent discharged.

JAMES G. MAGUIRE,
Counsel for Respondent.

Exhibit "A" to Answer of Thomas J. Geary.

Nome, Alaska, September 15th, 1900.

Alexander McKenzie, Esq., Nome, Alaska.

Dear Sir: Answering your request for my opinion in reference to the papers served on you in the actions in which you have been appointed receiver by the District Court of Alaska, Second Division, I respectfully submit the following:

From an examination of the papers served on you and the records filed with the clerk of the District Court of Alaska, at Nome, it appears that the defendants in the said actions have applied to the Circuit Court of Appeals that they be permitted to take an appeal from the order of this Court allowing an injunction and appointing you receiver; that on the filing of such petition, Judge Morrow, of the United States District Court of California, allowed them to prosecute such an appeal and directed that they give a supersedeas bond, and upon the filing of such bond a writ of supersedeas do issue in the different cases.

Your duties in the premises must be determined from the consideration of all the papers, as well as the protest filed with you by the plaintiffs in said actions and their claim that they will hold you personally responsible for whatever property is now in your hands as such receiver. It is not pretended that Judge Morrow has made any decision revoking the order of Judge Noyes appointing you receiver; he has merely permitted an appeal from such order to be taken to the Circuit Court of Appeals which alone, after a proper hearing, can

make such an order. At the present time, no appellate Court has made any decision revoking or declaring irregular or illegal the order heretofore made by Judge Noyes appointing you receiver, so that you are to-day as much the receiver in the respective causes in which you were appointed as you were before the issuance of the writs therein by his Honor, Judge Morrow.

The writ of supersedeas was issued on an order signed by Judge Morrow in which he prescribed its effect and what its operation should be. We find two of such orders in the following cases in which the completed records have been sent to the clerk of this District Court, as the law requires, to wit,

In Rogers vs. Kjellman, and
Melsing vs. Tornanses.

An examination of the records in these cases shows that Judge Morrow merely directed that the usual order of supersedeas should issue, and did not incorporate in it any directions commanding you to deliver the possession of any property to anybody, or that your possession of any property should be disturbed or interfered with by anybody. No clerk has authority to make a writ to contain any provisions other than those directed by the Judge in the order, which is the basis of the writ. The order is the authority for him to issue the writ, which is but another form evidencing the decision of the Court, and can be no broader than the original order which supports it. You have a right, and it is your duty, to rely upon the directions contained in the order signed by

the Judge, and where they are different from the order signed by the clerk, the order of the Judge must prevail.

In Chipps vs. Lindeberg et al., and the other cases, the only papers served on you, beside the demand of plaintiffs, is a certified copy of what purports to be a writ of supersedeas issued by the clerk of the United States Court of Appeals; such clerk is without authority to issue such a writ, except when ordered so to do by a Judge or Justice of such court, and if effect can be given to such writ, the right of the clerk must be shown in the manner pointed out by statute, by the filing of the order of the Judge ordering such writ of supersedeas to issue, allowing such writ and the prosecution of the appeal. The usual and customary way in which appeals are taken, and in fact the one pointed out and required by statute, is to file with the clerk of the court from which the appeal is taken a copy of the writ of error or appeal, the order for the supersedeas and the citation directed to the respondents. In these latter cases none of these papers have yet reached the clerk. I can reasonably presume, however, that Judge Morrow has proceeded no differently in those cases than in the cases first enumerated, and that his order directing the writ of supersedeas to issue is no broader than in those cases, and does not contain the language found in the clerk's writ commanding you to turn over the possession of the property to the defendants.

A writ of supersedeas never operates to reverse or nullify an order of a Court granting an injunction or appointing a receiver; its purpose is merely to stay all proceedings in the court from whence the appeal is

taken, leaving the question of the correctness or incorrectness of such antecedent proceedings to be determined on the hearing of the appeal. I interpret this order to be merely the ordinary writ of supersedeas, as I do not know of any authority which authorizes Judge Morrow to make any further or additional order in this class of cases, and under the ordinary writ of supersedeas you are only commanded to abstain from proceeding further in the premises, leaving you clothed with all the power which you obtained as receiver from Judge Noyes, and entitled to continue in the possession of whatever property has come into your hands, but prohibited from taking any other properties into your possession or proceeding as receiver any further in the premises.

The plaintiffs contend, by their notice served on you, that the order of Judge Morrow permitting an appeal in these cases is void for the following reasons, as I gather from their protest: That if the order appealed from is to be considered as an order granting an injunction, then that while the right of appeal to the Circuit Court of Appeals may be allowed, Judge Morrow was without authority to grant a writ of supersedeas which would stay the operation of the injunction. In this I think they are correct, as from an examination of the Alaska Code and the Federal Statutes prescribing how appeals may be taken from District Courts of the United States to the Circuit Court of Appeals, it is expressly provided that a supersedeas to stay an injunction can only be granted by the District Court making the order for the injunction, or by one of the appellate Judges, when such

appellate Judge was present at the hearing of the application for an injunction. This matter has been passed on many times by the Supreme Court and this decision affirmed in

In re Haberman Manufacturing Co., 147 U. S. 525,

where the Supreme Court held that the matter of granting a supersedeas in injunction cases rested entirely in the discretion of the District Judge, and that his refusal to permit a supersedeas could not be controlled by the Supreme Court, and that mandamus would not issue from the Supreme Court to compel him to issue a supersedeas.

In my opinion, the order of Judge Morrow, the appeal not being from his court, and he not having been present at the hearing of the motion ordering the injunction, was in excess of his jurisdiction, prohibited by the United States statutes and void. If we consider the appeal as being from an order appointing a receiver, I do not think that an appeal lies from such an order to the Circuit Court of Appeals. This matter was fully considered by the Supreme Court of the United States in the case of

Highland Avenue & B. R. Co. vs. The Columbian Equipment Co., 168 United States, 672.

In the last-mentioned case the order appealed from was identical with the order made by Judge Noyes in the case appointing you receiver and commanding the defendants therein to do and perform certain acts. The appellant in that case contended that the order was both

an order appointing a receiver and directing an injunction, as was contended by the defendants in this case. The Circuit Court of Appeals being in doubt as to whether they had jurisdiction to entertain the appeal certified the case to the Supreme Court of the United States, and asked for the opinion of that Court as to their jurisdiction. The Supreme Court decided that the order appealed from was only an order appointing a receiver, and that the mandatory portion was merely incidental to the receivership; that the order being for the appointment of a receiver, was not appealable from the District Court to the Circuit Court of Appeals, and that the latter Court was without jurisdiction in the premises.

In considering this case, I am satisfied that the Circuit Court of Appeals is without jurisdiction to entertain or hear an appeal from the order of Judge Noyes appointing you receiver; being without such authority, all orders made herein by such Court are, in my opinion, void.

The plaintiff demands of you that you retain this property; that he be permitted to make his motion in the Circuit Court of Appeals; that the appeal herein be dismissed because of want of jurisdiction in that court. I think the safest way for you to do is to hold all the property as you have it now, not making any change with it, or permitting any interference therewith until such time as the Circuit Court of Appeals, after having heard the parties, makes such order as it deems fit. As the writs are made returnable on the 28th of this month,

no very great amount of harm can accrue to any of the parties by your adopting this course.

Very respectfully yours,

State of California,
City and County of San Francisco. } ss.

Thomas J. Geary, being duly sworn, deposes and says: That he has read the foregoing answer and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated on his information and belief, and as to those matters that he believes it to be true.

T. J. GEARY.

Subscribed and sworn to before me this 17th day of October, 1901.

[Seal] F. D. MONCKTON,
Clerk United States Circuit Court of Appeals for the Ninth Circuit.

CERTIFICATE OF COUNSEL.

I hereby certify that in my opinion the foregoing answer is well-founded in point of law.

JAMES G. MAGUIRE,
Counsel for Respondent.

Service, by copy, of the within answer, is hereby admitted this 17th day of October, 1901.

[Endorsed]: No. 702. In the United States Circuit Court of Appeals, Ninth Circuit. In the Matter of Thomas J. Geary, for Contempt. Answer. Filed October 17, 1901. F. D. Monckton, Clerk. James G. Maguire, Parrott Building, San Francisco, Cal., Counsel for Respondent.

In the United States Circuit Court of Appeals, Ninth Circuit.

In the Matter of
JOSEPH K. WOOD.

Affidavit of Cabell Whitehead.

United States of America,
Northern District of California,
City and County of San Francisco. } ss.

Cabell Whitehead, being first duly sworn, on oath says:

I was the manager of the Alaska Banking and Safe Deposit Company, in the city of Nome, District of Alaska, and had exclusive charge of the bank and safe deposit vaults of that company from the 1st day of July until the 20th day of October, 1900.

Besides doing a general banking business the Company was equipped with safe deposit boxes, which were rented by the month to different persons for the storage and safekeeping of gold, gold-dust and other valuables.

About the 14th day of August, 1900, Alexander McKenzie, who had been appointed receiver of certain mining claims on Anvil Creek, in the Cape Nome Mining District, District of Alaska, engaged from this affiant eight safe deposit boxes in the said vault of the Alaska Banking and Safe Deposit Company, and deposited in the said boxes gold-dust and gold, said to be taken from the said

claims, pursuant to an order of the District Court of the Second Division of the District of Alaska, made on or about said date, so directing said McKenzie to deposit said gold.

That thereafter and until on or about the 15th day of October, 1900, said McKenzie deposited gold-dust, said to be taken from said claims, in said boxes, and on the 15th day of October, 1900, said McKenzie had so deposited and had on hand at said time gold-dust amounting in value, as I am informed and believe, to about the sum of one hundred and eighty thousand dollars.

That said McKenzie had been appointed receiver as aforesaid on the 23d day of July, 1900, by Arthur H. Noyes, Judge of said District Court, in the actions pending in said District Court entitled: Chipps vs. Lindeberg et al., Comptois vs. Anderson, Rogers vs. Kjellman, Melsing et al. vs. Tornanses, and Webster vs. Nakkela et al.; and during all of the times herein mentioned was acting as such receiver under said appointments.

That at all of the times herein mentioned Joseph K. Wood was, and now is, the duly appointed and acting attorney of the United States for the Second Division of the District of Alaska.

That on the 15th day of October, 1900, United States Deputy Marshal Shelley Monckton called upon me, in company with Capt. French, the commanding officer of the United States barracks at Nome, Mr. Samuel Knight, Mr. William H. Metson, and Mr. Fink, and said United States deputy marshal showed me the order made by this Honorable Court on the first day of October, 1900, where-

by the United States marshal of the Northern District of California was ordered to proceed forthwith to the city of Nome, in the District of Alaska, and then and there to enforce the orders and provisions of the writ of supersedeas issued by this Court in the case of Lindeberg et al. vs. Chipps, and other cases, on the 28th day of August, 1900, whereby said Alexander McKenzie, who had theretofore been appointed receiver as aforesaid in the cases hereinbefore mentioned, by said District Court of Alaska, was directed to forthwith return unto the defendants in said cases the possession of any and all property of which he had taken possession under and by virtue of the orders appointing him receiver.

That said United States deputy marshal at the same time served me with said order made by this Court on the first day of October, 1900, and thereupon said United States deputy marshal examined the vault records and ascertained the numbers of the said boxes, wherein said McKenzie had said gold-dust deposited, and thereupon I asked said United States deputy marshal if he had received the keys to said boxes from said McKenzie, and he answered that he had not. I then asked him why he did not force McKenzie to give up the keys, and he said that McKenzie did not have the keys, and I asked where they were and some one stated that they were in the possession of Joseph K. Wood, the United States attorney. I asked that I might be permitted to have an interview with Judge Wood before the boxes were forced open, in order to preserve the property of the bank. This was agreed to.

Affiant states, on information and belief, that on the same day and prior to the time when said United States deputy marshal came to said vault and served affiant with the said order of this Court, United States Deputy Marshals Monckton and Burnham had shown to the said Joseph K. Wood the said order of this Court, and had stated that they, the said United States deputy marshals, had come to Nome as officers of this Honorable Court to enforce said order and had demanded that he, the said Wood, should deliver to them the keys of McKenzie's said safe deposit boxes, inasmuch as they had been told by said McKenzie that said keys were in the possession of said Joseph K. Wood, and that said Joseph K. Wood had failed to comply with said demand.

Upon the agreement of said United States Deputy Marshal Monckton for me to see said Wood, I thereupon went out of the bank building and up Stedman avenue, where I met Judge Wood. I said to him: "I am informed that you have the keys to McKenzie's safe deposit boxes, and that, as you know, the United States marshals from San Francisco are now in possession of the vault, and threaten to break open McKenzie's boxes in order to enforce the orders of the United States Circuit Court of Appeals, if the keys are not forthcoming. I can see that no good purpose can be served to McKenzie or his friends by having this done, and as it will be a great inconvenience to me, I will be very glad if you will go down and see the marshals and deliver the keys to them under protest." His reply was: "If the sons of bitches want to see me, they know where to find me." I said: "Do you

mean for me to carry this answer to them?" He said: "I don't care whether you do or not." I then said to him: "Judge, will you give me the keys. It will be a matter of personal gratification to me if you will give me those keys, and will save me a lot of trouble." He then remarked: "I would not think of giving up those keys until I consult with a certain party." I replied to this: "There is no time for a consultation as they have now waited at my request for some time, and I think their patience is about exhausted." He turned on his heel, and as he walked up into the building, he said: "Let them continue with their damned burglaries." I returned to the bank and reported the result of my interview with the said Joseph K. Wood to the United States deputy marshal, and thereupon the said marshal, with the assistance of a locksmith, forcibly broke off the doors of the said boxes rented by the said Alexander McKenzie, and removed the said gold-dust therefrom.

CABELL WHITEHEAD.

Subscribed and sworn to before me this 14 day of May, 1901.

[Seal] SOUTHARD HOFFMAN,
Clerk United States Circuit Court, N. D. C.

[Endorsed]: No. 703. United States Circuit Court of Appeals for the Ninth Circuit. In the Matter of Joseph K. Wood. Affidavit of Cabell Whitehead. Filed May 15, 1901. F. D. Monckton, Clerk.

At a stated term, to wit, the October Term, A. D. 1900, of the United States Circuit Court of Appeals for the Ninth Circuit, held at the courtroom in the city and county of San Francisco, State of California, on the 18th day of May, in the year of our Lord one thousand nine hundred and one. Present, Hon. WILLIAM B. GILBERT, Circuit Judge; Hon. ERSKINE M. ROSS, Circuit Judge; Hon. THOMAS P. HAWLEY, District Judge.

In the Matter of
JOSEPH K. WOOD,
Contempt.
} No. 703.

Order to Show Cause.

Whereas, it has been made to appear by the affidavit of Cabell Whitehead, on file herein, that Joseph K. Wood did, at Nome, Alaska, on the 15th day of October, 1900, willfully and intentionally hinder, retard, interfere with, and embarrass the United States Marshal of the Northern District of California, or his deputies, while the said marshal, by his deputies, was acting pursuant to, and in the execution of, certain orders or writs of this Court made and issued out of this Court on or about the first day of October, 1900, in those certain causes pending in this Court entitled and numbered respectively as follows, to wit: Jafet Lindeberg et al., Appellants, vs. Robert Chipps, Appellee, No. 631; P. H. Anderson, Appellant, vs. O. Jose Comptois, Appellee, No. 632; John I.

Tornanses, Appellant, vs. L. F. Melsing. et al., Appellees, No. 634; William A. Kjellman, Appellant, vs. Henry Rogers, Appellee, No. 636; and furthermore, that the said Joseph K. Wood did, on said 15th day of October, 1900, willfully and intentionally attempt to prevent and thwart the said deputies and the said United States marshal from enforcing the said orders of this Court; and furthermore that the said Joseph K. Wood did, on said 15th day of October, 1900, willfully and intentionally speak with gross disrespect of this Court and its officers, and of the acts of the officers of this Court in carrying out the said orders of this Court:

Now, therefore, on motion of Messrs. E. S. Pillsbury and F. D. Madison, attorneys of this Court, it is ordered that the said Joseph K. Wood personally appear before this Court, in its courtroom in the city and county of San Francisco, State of California, on Monday, the 14th day of October, 1901, at eleven o'clock in the forenoon of the said day, then and there to show cause, if any he has, why he should not stand committed for contempt of this Court.

And it is further ordered that a certified copy of this order, together with a certified copy of the said affidavit of Cabell Whitehead, be served upon the said Joseph K. Wood as soon as may be.

I, Frank D. Monckton, Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing to be a full, true, and correct copy of an order to show cause entered in the Matter of Joseph K. Wood, No. 703, as the original thereof remains and appears of record in my office.

Attest my hand and the seal of said Circuit Court of Appeals at San Francisco, California, this 25th day of May, A. D. 1901.

[Seal] F. D. MONCKTON,
Clerk.

[Ten Cents U. S. Int. Rev. Stamp. Canceled.]

UNITED STATES MARSHAL'S RETURN.

I hereby return that I personally served the original writ, of which the within is a certified copy, on the 28th day of June, 1901, on Joseph K. Wood, by delivering to and leaving with Joseph K. Wood, said defendant named therein, at Nome, Alaska, in the 9th Circuit, a certified copy thereof, together with a certified copy of the affidavit of Cabell Whitehead therein mentioned.

San Francisco, Cal., July 29th, 1901.

JOHN H. SHINE,
United States Marshal for the United States Circuit Court of Appeals, Ninth Circuit.
By William P. Gamble,
Office Deputy.

[Endorsed]: No. 703. United States Circuit Court of Appeals for the Ninth Circuit. In the Matter of Joseph K. Wood. Certified Copy. Order to Show Cause, With Return of United States Marshal. Filed July 29, 1901. F. D Monckton, Clerk.

In the United States Circuit Court of Appeals, for the Ninth Circuit.

In the Matter of
JOSEPH K. WOOD.

Answer of Respondent Joseph K. Wood.

The respondent above named, Joseph K. Wood, reserving all exceptions and objections to the form and sufficiency of the affidavit of Cabell Whitehead, upon which the order to show cause herein is based, and reserving all objections to the form and sufficiency of the order to show cause herein, showing cause in obedience to said order, avers as follows:

Respondent states to this Honorable Court that he has no knowledge, at this time, whereby he can deny any of the mattters or things set forth on pages one, two, and three of the affidavit of Cabell Whitehead, attached to the above citation and served therewith on this respondent on or about the 25th day of June, 1901, at Nome, Alaska, and, therefore, assumes that the same are true.

Further answering, respondent admits that he was at the city of Nome, in the Second Division of the District of Alaska, on the 15th day of October, 1900, and that on that date he had in his possession certain keys said to belong to certain safe deposit boxes in the bank building of the Alaska Banking and Safe Deposit Company, in which said boxes, as respondent was informed and believed, was stored a quantity of gold-dust taken and extracted by Alexander McKenzie from certain placer mining claims of which he had theretofore been appointed

receiver. And respondent further states that on the morning of said date, between the hours of nine and ten o'clock, and after the said Alexander McKenzie had been arrested and taken into custody by virtue of a warrant of arrest theretofore issued out of said court, at the office of T. J. Geary, in the city of Nome, Alaska, to which said place the said Alexander McKenzie had been conducted by said officers, he, the said McKenzie then and there delivered to this respondent, for safekeeping, a pocket-book, containing, as the said McKenzie then stated to respondent, certain valuable papers belonging to the said McKenzie, the kind or character of which respondent has no knowledge, which said pocket-book, respondent afterwards learned, also contained the keys to said deposit boxes, at the time of its delivery to respondent as above set forth.

That shortly thereafter, on said day, one of the officers of this Honorable Court demanded of respondent the possession of said keys, but respondent did not deliver said keys to said officer for the reason that the said Alexander McKenzie was then and there present and did not direct or instruct respondent to so deliver up the possession of said keys, and respondent believed at that time that it was the wish and desire of the said McKenzie that respondent should keep said pocket-book as theretofore requested and directed.

Respondent further most respectfully states to this Court that his failure and refusal to give up the possession of said keys to the officer of this Honorable Court was not a purpose or intent on his part to hinder, embar-

rass or obstruct said officer in the discharge of his duty, or to render ineffectual any order or decree of this Court; nor was it the purpose or intention of respondent to offer any disrespect to this Honorable Court or any member thereof, or to be in contempt of court, but was an honest belief in the mind of respondent, at that time, that he had no authority or right to surrender possession of said keys without instructions from the said Alexander McKenzie, and against his wishes, as respondent then understood them. That if the conduct of respondent in the premises was in violation of the orders of this Honorable Court, respondent respectfully submits that it was the result of an error of judgment and a mistaken idea or sense of duty in the carrying out of a trust unknowingly assumed by respondent, and for which respondent at this time expresses most sincere regret.

Respondent further admits that on said 15th day of October, 1900, the said Cabell Whitehead likewise demanded of respondent the possession of said keys, but respondent failed to deliver the same for the reasons already stated, whereupon the officers of this Honorable Court, as respondent was informed, broke open said deposit boxes and removed said gold-dust therefrom. Respondent asserts that it is not true that he made use of the language charged against him in the affidavit of the said Cabell Whitehead, or any language of a like import or character, and further denies that he spoke in any terms of disrespect whatever of this Honorable Court or its officers, either in respect of said officers personally, or to their acts or conduct in carrying out the orders of Court.

Wherefore, respondent, having, as he believes, fully answered to the charge preferred against him, respectfully submits the foregoing statement of facts for the consideration of this Honorable Court, and should this Court determine therefrom that said acts constitute a contempt prays the most indulgent judgment of this Court consistent with the maintenance of its dignity.

JOSEPH K. WOOD,
Respondent.

United States of America,
Northern District of California,
City and County of San Francisco. } ss.

Joseph K. Wood, being first duly sworn, says that he is the respondent mentioned in the foregoing answer; that he has read the said answer, and knows the contents thereof, and that the said answer is true to the knowledge of affiant, except as to those matters therein stated on information and belief, and as to those matters he believes it to be true.

JOSEPH K. WOOD.

Subscribed and sworn to before me this 17th day of October, 1901.

[Seal] GEO. E. MORSE,
United States Commissioner for the Northern District of California, at San Francisco.

[Endorsed]: No. 703. In the United States Circuit Court of Appeals for the Ninth Circuit. In the Matter of Joseph K. Wood. Answer. Filed October 17, 1901. F. D. Monckton, Clerk.

In the Circuit Court of Appeals for the United States Ninth Circuit.

In the Matter of
C. A. S. FROST.

Affidavit of C. L. Vawter.

United States of America,
State and Northern District of California. } ss.

C. L. Vawter, being first duly sworn, deposes and says:

That in the months of September and October, 1900, and theretofore and thereafter, affiant was the duly appointed, qualified, and acting United States marshal for the District of Alaska, Second Division.

That on the 14th day of September, 1900, certain writs of supersedeas, which had been theretofore issued out of and under the seal of the above-entitled court in those certain cases entitled in such court, Lindeberg et al. vs. Chipps, Anderson vs. Comptois, Tornanses vs. Melsing et al., Kjellman vs. Rogers, and Nakkela et al. vs. Webster, were placed in the hands of affiant as said United States marshal for said district and division, with instructions to serve same upon various persons, including the Honorable Arthur H. Noyes, Judge of the District Court of the United States for said district and division, Messrs. Hubbard, Beeman and Hume, attorneys for the plaintiffs in the court last mentioned in said

cases, and on Alexander McKenzie, receiver in said cases; and affiant on said day by himself and his deputies duly served said writs personally at Nome, Alaska, upon said Arthur H. Noyes, Judge aforesaid, said Alexander McKenzie, and upon a member of said firm of Hubbard, Beeman & Hume, by delivering and leaving a certified copy of said writ in each of said cases to and with each of said persons.

Affiant further says that theretofore and on the 1st day of August, 1900, he arrived at Nome, Alaska, in the discharge of his official duties as such marshal, together with one C. A. S. Frost, who, during all the times herein mentioned was and is an attorney at law, and who, prior to the 1st day of August, and until he resigned after the occurrence of the events hereinafter narrated (to become assistant United States attorney for said division and district under appointment by Joseph K. Wood, United States attorney for said district), was a special examiner for the Department of Justice of the United States, who had been sent by said Department to Alaska for the purpose, among other things, of advising affiant as such marshal, and the clerk of such District Court, in the proper discharge of their respective official duties as such; and said Frost then and thereafter during all the times hereinafter stated did from time to time, during the period of time herein mentioned, advise affiant as such marshal and the clerk of said court in the performance of their respective duties.

On the 15th day of September, 1900, said Frost, while acting in his capacity as said special examiner and in his further capacity as legal adviser of affiant, rushed into affiant's office at Nome, Alaska, and then and there dictated and handed to affiant who was there present, a letter in words and figures following, to wit:

"Nome, Alaska, Sept. 15th, 1900.

"Hon. C. L. Vawter, United States Marshal, Nome, Alaska.

"Sir: Your attention is invited to that portion of section No. 846, Revised Statutes of the United States, which reads as follows:

" 'That where the ministerial officers of the United States have or shall incur extraordinary expenses in executing the laws thereof, the payment of which is not specifically provided for, the President of the United States has the authority to allow the payment thereof under the special taxation of the District or Circuit Court of the district in which the said services have been or shall be rendered, to be paid from the appropriation for defraying the extraordinary expenses of the judiciary.'

"If it shall be necessary for you to incur extraordinary expenses under this statute in suppressing specific unlawful acts, acts of violence or attempted violence, burglary, robbery, etc., you will be authorized to employ such force as may be necessary in the premises and the necessary expenses thereof incurred by you may be included in an extraordinary expense account, to be rendered and paid as provided in said section.

"Respectfully,

"C. A. S. FROST,

"Special Examiner Department of Justice."

Immediately thereafter said Frost ordered and directed affiant as such marshal to swear in a posse comitatus for the purpose of preventing the execution and enforcement of said writs of supersedeas. Said Frost then and there stated to affiant substantially as follows: "I am afraid that this crowd" (referring to the defendants in said cases in said District Court, i. e., the Wild Goose Mining and Trading Company, the Pioneer Mining Company, and P. H. Anderson) "are going to get that dust" (referring to certain gold-dust hereinafter mentioned); "you must swear in a posse comitatus and at all hazards prevent them getting it. In doing it you may have to fight the military, but you want to be prepared to fight anybody." To this affiant replied that he did not think there was any danger at such time of anybody breaking into the bank or creating a breach of the peace, but that if he (affiant) wanted a posse comitatus, instead of swearing in strangers whom he didn't know, he was authorized to call on the military forces of the United States That if he concluded he needed assistance, he would call on the military forces of the United States, to which Frost replied, "To hell with the military! You can't trust them." Affiant then and there further stated that the military were the only people at Nome and vicinity that he felt he could and would trust for that purpose.

Just at this point of the conversation affiant and said Frost started to leave the former's office, and said Frost continued to urge upon affiant to take the course which he (said Frost) had directed to be taken and to prevent the said gold-dust at all hazards from coming into the

possession of the defendants in said cases; but affiant declined to follow said advice and direction.

Affiant further avers that during all of said times said Frost was closely associated and frequently in company with said Arthur H. Noyes and said McKenzie, and the latter afterwards boasted to affiant that he (said McKenzie) used said Frost as so much putty, illustrating with his hands the manipulation of putty, saying further, "He is putty in my hands."

And on information and belief affiant further avers that said Frost at such times was in the employ of said McKenzie, and for services rendered to the latter during said times received at least six hundred dollars.

Affiant further avers that in said month of September and theretofore considerable gold-dust hereinbefore mentioned, aggregating on said 14th day of September, 1900, over $200,000 in value, had been extracted from the mines involved in the litigation hereinbefore mentioned, and had been deposited by said McKenzie as such receiver, and was at such time in the vaults of the Alaska Banking and Safe Deposit Company at Nome, Alaska, in certain boxes, to which said McKenzie, as receiver in said cases appointed by said Arthur H. Noyes, as Judge aforesaid, then and there had access, and no one else had access thereto.

And affiant further avers that during all the times herein stated there were two or three hundred United States soldiers stationed either at Nome or at Fort Davis, four miles distant therefrom, from whom he could and would have obtained assistance in the performance of his duties as such marshal if necessary. And the commanding officers of said troops at all of such times expressed them-

selves as ready, willing and able to assist affiant in the performance of his duties as such marshal, and said Frost at all times well knew this fact.

C. L. VAWTER.

Subscribed and sworn to before me this 31st day of August, 1901.

[Seal] F. D. MONCKTON,

Clerk United States Circuit Court of Appeals for the Ninth Circuit.

[Endorsed]: No. 744. United States Circuit Court of Appeals for the Ninth Circuit. In the Matter of C. A. S. Frost. Affidavit of C. L. Vawter. Filed September 9, 1901. F. D. Monckton, Clerk.

UNITED STATES MARSHAL'S RETURN.

JOHN H. SHINE, U. S. Marshal.

A. L. FARISH, Chief Office Deputy.

DEPARTMENT OF JUSTICE.

UNITED STATES MARSHAL'S OFFICE.

Northern District of California.

Telephone No. 5232.

(Copy.)

San Francisco, Cal., Sept. 26, 1901.

Marshal of the United States Supreme Court, Washington, D. C.

Sir: Enclosed you will please find two certified copies of order to show cause in the matter of C. A. S. Frost, together with a certified copy of affidavit of C. L. Vawter.

I am requested by the attorneys to ask you to serve one of the certified copies of order and the certified copy of affidavit of C. L. Vawter upon Mr. C. A. S. Frost, who is supposed to be in Washington, D. C. You can probably find him in company with Judge Noyes. Please make your return on one of the certified copies of order and mail same to me as soon as convenient.

Very respectfully,
JOHN H. SHINE,
United States Marshal,
Per A. L. Farish,
Chief Office Deputy.

At a stated term, to wit, the September term, A. D. 1901, of the United States Circuit Court of Appeals for the Ninth Circuit, held at the courtroom in the city of Seattle, in the State of Washington, on Monday, the ninth day of September, in the year of our Lord, one thousand nine hundred and one. Present: Honorable JOSEPH McKENNA, Associate Justice, Supreme Court United States; Honorable WILLIAM B. GILBERT, Circuit Judge; Honorable ERSKINE M. ROSS, Circuit Judge.

In the Matter of C. A. S. FROST. } No. 744.

Order to Show Cause.

Whereas, it has been made to appear to this Court by the affidavit of C. L. Vawter, this day filed, that C. A. S. Frost, special examiner of the Department of Justice, did,

at Nome, Alaska, on the 15th day of September, 1900, act contrary to, and in violation of, the writs of supersedeas and the orders of this Court contained in said writs, which were issued out of this court on or about the 28th day of August, 1900, in those certain causes herein entitled and numbered as follows, to wit: Jafet Lindeberg et al., Appellants, vs. Robert Chipps, Appellee, No. 631; P. H. Anderson, Appellant, vs. O. Jose Comptois, Appellee, No. 632; John I. Tornanses, Appellant, vs. L. F. Melsing et al., Appellees, No. 634; Mickle J. Nackkela et al., Appellants, vs. Herbert H. Webster, Appellee, No. 635, and William A. Kjellman, Appellant, vs. Henry Rogers, Appellee, No. 636:

Now, therefore, upon motion of Messrs. Page, McCutchen, Harding & Knight, attorneys of this court, it is ordered that the said C. A. S. Frost personally appear before this Court, in its courtroom in the city and county of San Francisco, State of California, on Monday, the fourteenth day of October, 1901, at eleven o'clock in the forenoon of the said day, then and there to show cause, if any he has, why he should not stand committed for contempt of this Court.

And it is further ordered that a certified copy of this order, together with a certified copy of the said affidavit of C. L. Vawter, be served upon the said C. A. S. Frost as soon as may be.

I, Frank D. Monckton, Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing to be a full, true, and correct copy of an order to show cause entered in the Matter of C. A.

S. Frost, No. 744, as the original thereof remains and appears of record in my office.

Attest my hand and the seal of said Circuit Court of Appeals, at San Francisco, California, this 13th day of September, A. D. 1901.

[Seal] F. D. MONCKTON,
Clerk.
By Meredith Sawyer,
Deputy Clerk.

Served certified copy of within order and certified copy of affidavit of C. L. Vawter on within named C. A. S. Frost, personally, at Washington, D. C., this 20th day of Sept., 1901.

AULICH PALMER,
United States Marshal,
D. C.

[Endorsed]: No. 744. United States Circuit Court of Appeals for the Ninth Circuit. In the Matter of C. A. S. Frost. Order to Show Cause. Filed September 26, 1901. F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals for the Ninth Circuit.

In the Matter of C. A. S. FROST. } No. 744.

Answer of Respondent C. A. S. Frost.

The respondent above named, C. A. S. Frost, reserving all exceptions and objections to the form and sufficiency

of the affidavit of C. L. Vawter, upon which the order to show cause herein is based, and reserving all objections to the form and sufficiency of the order to show cause herein, showing cause in obedience to said order, avers as follows:

Respondent admits that at the time stated in the affidavit of said Vawter, he, the said Vawter, was the United States marshal for the district mentioned in said affidavit.

Respondent admits that he arrived at the port of Nome in company with the said Vawter on or about the first day of August, A. D. 1900; he admits that he is an attorney at law. Respondent admits and alleges that for about five years prior to the first day of August, 1900, he was in the employ of the Department of Justice at the city of Washington; that on or about the third day of July, A. D. 1900, he was ordered by the attorney general to proceed to Alaska to report to the Department and to represent the said Department as a special examiner thereat; admits that, among other things, it was his duty to advise the said United States marshal and the clerk of the District Court in respect to their accounts and the methods of conducting the business of their offices; and he admits that, from time to time during the period mentioned in the said affidavit, he did advise the said United States marshal and the clerk of said court in respect thereto.

Respondent further admits that on the 15th day of September, 1900, that he dictated and handed to the said United States marshal a letter, a copy of which is set

forth in the said affidavit. In respect thereto, respondent avers that the said marshal had then in his employ a stenographer that for some time prior thereto had been, with the consent of the said marshal, taking dictation and writing for this respondent, at a compensation fixed by the said stenographer, and that, for some time prior thereto, with the consent of the United States marshal, his office had been used by this respondent for the transaction of his business and writing and dictating letters, except that on occasions the said stenographer, at the request of respondent, came to the room in which the respondent lived and took dictation there; that because of said facts respondent dictated said letter at the office of the said marshal; but he denies that he either entered the said office or dictated the said letter in an unseemly or in an improper manner; that the reasons which led up to the dictating of said letter are as follows, and not otherwise: That a long time prior to the said 15th day of September, 1900, the said C. L. Vawter, as United States marshal, aforesaid, and frequently between the seventh day of August, A. D. 1900, and the date of said letter, called the attention of this respondent as representative of the Department of Justice, to the fact, as the said Vawter stated to respondent, that the force of deputies allowed him by the Department was totally and obviously inadequate to protect life and property in the town of Nome, that said town of Nome was an unorganized mining camp and had no police protection, and that he, the said marshal, feared in case of emergency his force of deputies

would be unable to preserve order or prevent riot or bloodshed in case of emergency, and had requested the advice of respondent as to what he should do in case an emergency should arise needing a larger force than that at his command under regular employment; that respondent then told the said Vawter, in response to said Vawter's inquiry, that in case of emergency the law provided that he, as United States marshal, could call upon the good citizens of the town of Nome to aid him in suppressing violence, should he, the said marshal, need such assistance, and that he, as marshal, could pay such persons for their services in the manner provided by law; respondent was informed and believed that the said marshal had called the attention of the attorney general of the United States to the lawless conditions prevailing at Nome and to the inadequacy of his force of deputies; that on or about the fifteenth day of September, 1900, the date of said letter, there was great excitement among the people in Nome, and in and around a certain bank building, known as the Alaska Banking and Safe Deposit Company, a large number of men had assembled who were boisterous and appeared unruly and were armed with deadly weapons and apparently threatening violence, and that it was believed, and currently reported, that there would be bloodshed and that the bank would be broken into and robbed; that on said day the said marshal met this respondent on the street in Nome and called respondent's attention to the existing conditions and stated that he was afraid there would be serious trouble, confirming respondent's opinions, formed from

observation of the conditions prevailing, that there would be bloodshed; that thereupon, for the guidance of the United States marshal, in case he should need such assistance, respondent did write and handed to the marshal the letter in question; that no person, directly or by implication ever requested respondent to advise the marshal in any respect as to what he should do or should not do under the circumstances, except the said marshal himself.

Respondent denies that he ever ordered or directed the said marshal, as such, or at all, to swear in a posse comitatus or any other body, for the purpose of preventing the execution and enforcement of writs of supersedeas or for any other purpose whatsoever, and he denies that he ever suggested to said marshal the employment of additional person or persons, except in so far as he, the said marshal, deemed it necessary in the proper execution of his duties as marshal; and the respondent denies that he knew or was informed or had knowledge that any attempt had been made or was being made to enforce any writ of supersedeas, or that any attempt was being made to prevent the enforcement of any writ or writs of supersedeas.

Respondent denies that he stated to the said marshal in substance or effect, "I am afraid that this crowd" (referring to the defendants in said cases in said district court, i. e., the Wild Goose Mining and Trading Company, the Pioneer Mining Compay, and P. H. Anderson) "are going to get that dust" (referring to certain gold-dust hereinafter mentioned); "you must swear in a posse comitatus and at all hazards prevent them getting it. In do-

ing it you may have to fight the military, but you want to be prepared to fight anybody"; that respondent did not know and was not informed that any such actions were pending or that there was any dispute between the parties mentioned, or that the parties mentioned existed except that by reputation he did know that there was such a concern as the Pioneer Mining Company; respondent, however, avers that he may, and likely did, in a conversation at or about that time, with the said marshal, state to him that there was danger of the bank before mentioned being broken into and that there might be a breach of the peace, and the respondent at said time believed, and had good cause to believe, such to be the fact.

Respondent denies that he ever at any time or place, directly or indirectly, in words or in substance, advised or suggested to the said marshal that he, the said marshal, should not employ or call upon the military forces of the United States for assistance, or that he ever said, "To hell with the military! You can't trust them," or words of similar import or effect; and the respondent denies that at any time or place said marshal ever expressed a preference for the military of the United States, or that he ever stated that he was authorized to call on the military forces of the United States, and that if he concluded he needed assistance he would call on the military forces, and denies that the marshal ever stated to him that the military were the only people at Nome or vicinity that he felt he could trust; that, on the contrary, on many occasions, the said marshal, in discussing the people of Nome, known to the said marshal and to this respondent, had named persons who could be trusted in

his opinion, and who could not be trusted and who should not be trusted.

Respondent denies that he ever urged or suggested or directed the said marshal to take any steps whatever for the purpose of preventing gold-dust or any other property from coming into the possession of the defendants in the cases mentioned, and the respondent states that he did not know, and was not informed, that the defendants in any cases or any parties to any cases, desired or wanted or attempted to get any gold-dust or any property whatsoever, except in so far as this respondent, in common with others, feared and had good reason to fear that the bank before mentioned would be broken into.

Respondent denies that during the times mentioned in the said affidavit he was closely associated or that he was at all associated, or frequently in company, with the Honorable Arthur H. Noyes, the Judge of the District Court for Alaska, or with Alexander McKenzie, except that he knew both of said gentlemen, and that he had had occasion to consult with said Judge in reference to the fees and compensation of certain officers, but that he had no communication with the said Judge and no correspondence or business with him, except solely in relation to official business; that Judge Noyes had treated the respondent in a manner becoming a gentleman, and that respondent respected Judge Noyes and endeavored to treat him with respect and as one gentleman should treat another; that at that time respondent's acquaintance with Alexander McKenzie was very slight, that respondent simply knew him and had talked with him on one or two occasions; that one of the conversations so had with

the said McKenzie was had at the request and at the instigation of the said marshal and in connection with the said marshal's duties.

Respondent denies that he was ever at any time in the employ of the said Alexander McKenzie or that he ever rendered any services for the said McKenzie, directly or indirectly, or that he ever received for services performed or to be performed the sum of six hunded dollars or any other sum or amount whatsoever.

Respondent has no knowledge or information sufficient to form a belief as to whether the said Alexander McKenzie, at any time, boasted to the said marshal that he, the said McKenzie, used this respondent as so much putty, or illustrated with his hands the manipulation of putty, or that the said McKenzie said, "He is putty in my hands." Respondent does not believe that the said McKenzie ever used any such language or ever made any such illustration; that, if he did, he said and acted what was untrue; and that the said marshal well knew that such statements and alleged actions were untrue.

Respondent has no knowledge or information sufficient to form a belief as to whether there was considerable gold-dust or any gold-dust which had been extracted from the mines involved in litigation deposited by McKenzie as receiver, or otherwise, in the vaults of the Alaska Banking and Safe Deposit Company, or as to whether said McKenzie and no one else had access thereto except that respondent had been informed and believed that an order had been made in the case of Chipps vs. Lindeberg et al., requiring that the gold-dust ex-

tracted from the mine in that case be deposited in the vaults of the said banking and deposit company.

Respondent admits that on the 15th day of September, 1900, a considerable number of United States soldiers were stationed at Fort Davis, four miles distant from Nome, but that respondent was advised and understood that the soldiers had expressed much dissatisfaction at the performance of patrol or other duties at Nome, as the said marshal well knew; and that respondent at said time did not know that the said marshal could compel, or had the right to call upon the military for assistance.

Respondent admits that during the times mentioned in the affidavit of the said Vawter, he was the United States marshal as stated. Respondent denies that he had any knowledge that on the fourteenth day of September, 1900, writs of supersedeas issued out of the Circuit Court of Appeals for the United States, Ninth Circuit, in the cases of Lindeberg et al. vs. Chipps, Anderson vs. Comptois, Tornanses vs. Melsing et al., Kjellman vs. Rogers, Webster vs. Nakkela, were placed in the hands of the said marshal for service upon any persons or that the said marshal, on that day, either by himself or his deputies, had served writs aforesaid upon any person whatsoever, in any manner whatever, except that in the case of Chipps vs. Lindeberg et al. he was informed and believed that a supersedeas had been granted in said cause, and the respondent knew that proceedings had been taken in said cause in appeal from an order said to have been made by the Judge of the District Court of the District of Alaska appointing Alexander McKenzie receiver.

Respondent, further showing cause, denies that he did on the 15th day of September, 1900, or at any other time, act contrary to or in violation of any writ of supersedeas granted or order made by this Honorable Court or that he ever, at any time or place, by word or act or omission, intended to act or aided or abetted or acted contrary to or in violation of any writ or order issued or granted in any case by this Honorable Court.

Wherefore he prays that he be adjudged not guilty of the offenses charged in the affidavit of the said Vawter.

C. A. S. FROST,
Respondent.

P. J. McLAUGHLIN,
Counsel for Respondent.

United States of America,
State and Northern District of California. } ss.

C. A. S. Frost, being duly sworn, says that he is the respondent in the above-entitled matter, named and referred to in the above answer and showing of cause, and in a citation and order issued by this Honorable Court requiring said respondent to be and appear before this Honorable Court on the 14th day of October, A. D. 1901, in its courtroom in the city and county of San Francisco, State of California; that he has read the above and foregoing answer and showing of cause, and knows the contents thereof, and that the same is true of his own knowledge, except as to those matters therein stated on information and belief, and as to those matters, he believes it to be true.

C. A. S. FROST.

Subscribed and sworn to before me this 17th day of October, A. D. 1901.

[Seal] F. D. MONCKTON,
Clerk United States Circuit Court of Appeals for the Ninth Circuit.

[Endorsed]: No. 744. In the United States Circuit Court of Appeals, Ninth Circuit. In the Matter of C. A. S. Frost. Answer and Showing of Cause. Filed October 17, 1901. F. D. Monckton, Clerk.

At a stated term, to wit, the October term, A. D. 1900, of the United States Circuit Court of Appeals for the Ninth Circuit, held at the courtroom, in the city and county of San Francisco, on Monday, the thirteenth day of May, in the year of our Lord one thousand nine hundred and one. Present, The Honorable WILLIAM B. GILBERT, Circuit Judge; Honorable ERSKINE M. ROSS, Circuit Judge; Honorable THOMAS P. HAWLEY, District Judge.

JAFET LINDEBERG et al.,
Defendants and Appellants,
vs.
ROBERT CHIPPS,
Appellee
No. 631.

Order to Take Deposition of Cabell Whitehead.

An application having been made by E. S. Pillsbury, Esquire, amicus curiae, for a rule upon Joseph K. Wood, the United States District Attorney for the Second Division of the District of Alaska, to show cause, if any there be, why he should not be punished for contempt of the

above-entitled court for obstructing the enforcement at Nome, Alaska, of a certain writ of supersedeas issued in the above-entitled case, and it appearing that one Cabell Whitehead is a necessary and material witness in such inquiry:

Now, therefore, it is by the Court ordered that the deposition of said Cabell Whitehead be taken before the Honorable E. H. Heacock, United States Commissioner at San Francisco, California, and said Commissioner is here by designated as the Commissioner of this court for that purpose, and that such deposition be taken at such time as said Commissioner shall designate, upon such oral interrogatories as may be propounded to said witness by E. S. Pillsbury, Esquire, or F. D. Madison, Esquire, as amici curiae herein, and upon such cross-interrogatories as may be propounded to said witness by anyone on behalf of said Wood.

It is furthermore provided that such reasonable notice shall be given to said witness and any other person interested herein, as said commissioner shall determine, and that said deposition when taken be certified by said commissioner, and returned to the clerk of this court with all reasonable speed.

I hereby certify that the foregoing is a full, true, and correct copy of an original order made and entered in the within entitled cause.

Attest my hand and the seal of said United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, this 16th day of May, A. D. 1901.

[Seal] F. D. MONCKTON,
Clerk.

[Ten Cents U. S. Int. Rev. Stamp. Canceled.]

In the United States Circuit Court of Appeals, for the Ninth Circuit.

JAFET LINDEBERG et al.,
Defendants and Appellants,

vs.

No. 631.

ROBERT CHIPPS,
Plaintiff and Appellee.

In the Matter of the Application for a Rule upon Joseph K. Wood, the United States District Attorney for the Second Division of the District of Alaska, to Show Cause, if any There be, Why He Should Not be Punished for Contempt of the United States Circuit Court of Appeals for the Ninth Circuit, for Obstructing the Enforcement at Alaska of a Certain Writ of Supersedeas Issued in the Above-entitled Cause.

Deposition of Cabell Whitehead.

Thursday, May 16, 1901.

Deposition Taken in Above Matter Before Hon. E. H. HEACOCK, Commissioner.

F. D. MADISON, Esq., as Amicus Curiae, in Support of the Order to Show Cause.

THOMAS J. GEARY, Esq., on Behalf of Himself.

CABELL WHITEHEAD, having been duly sworn, testified as follows:

(Deposition of Cabell Whitehead.)

Mr. MADISON.—Q. Please state your name and residence.

A. My name is Cabell Whitehead. I am a resident of Washington, I guess; temporarily of Nome, Alaska. Washington is my family's residence.

Q. Washington, D. C.? A. Yes, sir.

Q. What is your business, Doctor?

A. I was, at the time of my going to Alaska, the assayer of the Bureau of the Mint. I have not resigned that position, but I am on an extended leave. It is more than probable I will never assume the duties of the office again.

Q. Is your office in that occupation in Washington, District of Columbia?

A. Yes, sir, District of Columbia.

Q. You have held that position for some time?

A. Since 1889.

Q. Were you at Nome during the year 1900?

A. I was.

Q. In what business were you engaged?

A. I was the manager of the Alaska Banking and Safe Deposit Company.

Q. And as such manager, did you have exclusive charge of the bank and the safe deposit vaults of that company, from the 1st day of July to the 20th day of October, 1900? A. I did.

Q. Did the company have a vault containing safe deposit boxes? A. It did.

Q. Did you rent any of those boxes to Alexander McKenzie?

A. Yes, sir, he had a number of them.

(Deposition of Cabell Whitehead.)

Q. About what time, if you recollect, did you rent them to him?

A. Mr. McKenzie rented one box for himself almost as soon as he arrived in Nome; I do not remember the date. I could get the date by referring to the books. That was a personal matter. Later he rented, I think, two other boxes, after he was appointed receiver, and at a little later date he rented quite a number of boxes. The total number he rented, I think I have stated somewhere, but I cannot now without reference to the papers give it. I think there were eight at one time rented.

Q. Did he have eight safe deposit boxes in your vault rented during part of the month of August, part of September, and part of October, 1900?

A. Yes, sir, there were not less than eight, I think. My recollection is now, though I cannot state positively, that there were eleven boxes in all.

Q. Did he deposit any gold-dust in those boxes taken by him as receiver under appointment by Judge Noyes?

A. That is my understanding of it. He had gold-dust deposited there, and I understood it came from that source.

Q. Do you know approximately how much gold-dust he had on deposit there, say on or about the 15th day of October, 1900?

A. That is the time that the deputy marshal arrived there?

Q. That is the time that the deputy marshal took gold-dust out of the safe deposit boxes.

(Deposition of Cabell Whitehead.)

A. I weighed that gold, and my impression now is that it was about $180,000 or $185,000. I did not melt it or assay it, so that is only an approximation.

Q. For some time previous to this, had there been approximately that amount deposited there?

A. The amount was increased considerably during the period that he operated these mines, as I understand it. I did not always know when Mr. McKenzie went to the boxes. There was a clerk in charge of the vault. He went in and put whatever he wanted in the boxes, and took out what he wanted. It was supposed he was depositing the gold-dust; in fact, there was an order of the Court directing him to deposit the gold-dust.

Q. On or about September 14, 1900, as I understand it, the writ of supersedeas issued by this Circuit Court of Appeals reached Nome, and after that time, and until October 15th, do you know whether Mr. McKenzie deposited any gold-dust in those boxes?

A. Not of my own knowledge. A certain amount of gold-dust, I was told, was deposited there by direction of the Court, and Captain French, of the army, was present when it was delivered. I was not in the bank. I was told that it was brought in. I do not know if it went into the boxes or not, but it is my impression that Mr. McKenzie did not go into the boxes after the writ of supersedeas was issued, or, rather, after it arrived there, at all—after September 14th.

Q. State what occurred, if anything, on October 14th or 15th, with respect to the taking of the gold-dust out

(Deposition of Cabell Whitehead.)

of these safe deposit boxes by the United States Deputy Marshal Shelly Monckton.

A. Mr. Shelly Monckton came in, I think, on the afternoon of that day, and stated he was an officer of the court, with an order to seize this gold and turn it over to the defendant in the case, and asked for the numbers of the boxes.

Q. Did he show you that order, or read it to you?

A. I will not say now positively that he did. It is quite probable that he did. At any rate, he served the order. I had met him, been introduced to him, and knew his business, so I did not insist on it, if he did not. My impression is that he went through the form; in fact, I was introduced to him again at that time by Captain French, of the army, I think, who came in with a squad of men to enforce the order if I should resist it. I protested against the breaking open of the boxes, and declined to give them the numbers of the boxes, even, and then, of course, they very soon took the record which laid on the desk, and from that secured the numbers of these boxes, the vault was opened at the time. They went in and located the boxes. I then asked if they had the keys to the boxes. The deputy said he did not. I said, "Why did you not get them from Mr. McKenzie?" He said, "We asked him for them but he did not have them." I asked who had them. He said Judge Wood had the keys.

Q. Judge Joseph K. Wood?

A. Judge Joseph K. Wood, the United States Attorney. I asked if there had been a demand made for the keys. I was very much opposed to having my boxes

(Deposition of Cabell Whitehead.)

broken open. I thought the keys should be gotten and the boxes unlocked. Mr. Monckton said he had endeavored to get the keys, and could not do it, and there was nothing left to do but to break the boxes open. I then requested that I be allowed to see Judge Wood, to see if I could induce him to give up the keys, as I did not care to have the property I was in charge of injured, unless it was absolutely necessary. They delayed the opening of the boxes while I went to see Judge Wood. I found him on Steadman avenue, and said to him that the deputy marshals were in charge of the vault, and that they would like to see him about giving up the keys. He said, "If the sons of bitches want to see me, they know where to find me," and started to leave. I said, "Judge, this is a matter of some interest to me. I cannot see that you gain anything by allowing them to destroy my property, when there will be no advantage gained to you people. I wish very much you would go down and see them," or something to that effect. He said he did not care to see them at all. I said, "Will you deliver those keys to me; will you let me give them the keys if you don't want to do it?" He said, "I will not give up those keys to any one until I have seen a certain person and talked with him." I said, "There is no time to see anyone; they have already been there quite a while, and they are going to break the boxes open if the keys are not produced in a few minutes. I think their patience is pretty well exhausted now." He said, "Let them proceed with their burglaries," and walked off. I went back and re-

(Deposition of Cabell Whitehead.)

ported that I was not able to get the keys, and the boxes were opened.

Q. At that time, when you went to Joseph K. Wood, you had been informed, had you, by Mr. Monckton, that he had already seen Joseph K. Wood, and told him that he was an officer of the Circuit Court of Appeals, or deputy marshal, and had come up there for the purpose of carrying out the order of the Circuit Court of Appeals?

Mr. GEARY.—Objected to as pure hearsay.

Mr. MADISON.—May I ask for whom you appear?

Mr. GEARY.—I appear for myself. I don't know how many of these proceedings you are going to institute against anybody. There is no citation for anybody to appear yet. Under the procedure, this testimony can be used against one person or another. As there are applications for writs against me as well as Mr. Wood, and others, I think I have a right to appear for myself.

Mr. MADISON.—I am very glad to have you appear. I wished to know for whom you appear.

Mr. GEARY.—I know what you want. I will ask you who you appear for?

Mr. MADISON.—I appear for the Court.

Mr. GEARY.—Where is the order directing you to appear for the Court?

Mr. MADISON.—It is here.

The COMMISSIONER.—I have a certified copy of it.

(Deposition of Cabell Whitehead.)

Mr. MADISON.—Read the question, Mr. Reporter.

(The reporter reads the previous question.)

A. No, sir, I was not told that. Mr. Monckton did not tell me that. Somebody, either Mr. Monckton or Mr. Metson, said that Wood had the keys. That was about all there was of it.

Q. Now, at the time that Joseph K. Wood spoke of Deputy Marshals Monckton and Burnham as sons of bitches, did he know that they were at Nome as officers of this court?

A. I presume he did, as it had been street talk there for several hours, but I had no way of knowing.

Q. Did you say anything to him to the effect that they were deputy marshals?

A. Yes, sir, I stated they were deputy marshals. I spoke of him as the deputy marshal of the court.

Q. Did you tell him that they were there, as he knew, for the purpose of carrying out the orders of this court?

A. My impression now is that I stated, "As you know, the deputy marshal is in the vault, and he is going to break those boxes open unless he gets the keys." That was certainly the purport of my remarks, if not the words.

Q. After leaving Joseph K. Wood, did you report the result of your conversation to Deputy Marshal Monckton?

A. I simply reported the result of the interview to the deputy marshal, that I was unable to secure the keys.

Q. Do you know C. L. Vawter?

A. Yes, sir, I know Mr. Vawter.

Q. What position, if any, did he occupy?

A. He was the marshal.

(Deposition of Cabell Whitehead.)

Q. At Nome? A. At Nome.

Q. Did you see him on or about the 15th day of September, 1900?

A. If that is the date on which the order of supersedeas was returned, I did see him on that day. He was in the bank.

Mr. GEARY.—It was received on the 14th.

A. The day that the row was in the bank, he was there. I don't remember the date. About that time.

Mr. MADISON.—Q. What conversation did you have with him at that time, if any?

A. Well, I was called into the bank. I was in my private room at that time. I went down through this crowd, and Vawter served me with a paper, which I could not see was directed to me at all. I think it was a copy of this supersedeas. I said, "Why do you give me this paper?" He said, "They ordered me to serve you with a copy of it," or something to that effect. Beyond that, I had nothing more to say. At a later date, probably that evening or the next day, Mr. Vawter came to my private office in the bank, and showed me a letter, or an order—it was on letter paper, anyway—it was not on legal paper—from the Judge to him, directing him to take charge of the money in these boxes, and not to allow any one to have access to it. He said, "Now, it is in your charge, and you will look to me for orders in regard to it."

Q. Did he assume any control over the vaults or boxes, or anything?

A. Not beyond notifying me. There were a couple of

(Deposition of Cabell Whitehead.)

soldiers there at the time, but they had been there quite a long time doing police duty. Those men were supposed to be indirectly under my orders, subject to my orders. Of course, they were under Captain French, of the barracks, primarily, but they were supposed to be directed by me. I do not know what orders Marshal Vawter gave those men. He may have given them some orders. He did not in any way interfere. He was never in the bank, except as a customer on banking business, or socially afterwards. I never saw him around there.

Q. You say there were a couple of soldiers there?

A. There were a couple of men stationed there.

Q. They had been for some time previous to that?

A. Yes, sir, they were put there at the request of the Judge, when the amount of money began to accumulate. The Court felt it ought to have some protection in a community like that. I went with Judge Noyes to see Captain French. He made the request for them to be stationed there. I said it was agreeable to me, and would give them every facility; we would be very glad to have them. So these men were detailed, and there was a guard there continually day and night from that time up to the time I left on the 21st of October.

Q. Those soldiers were there long prior to September 15, 1900? A. Yes, sir.

Q. They were not put there at that date?

A. No, sir.

Q. Now, this letter that you say Vawter had received from Judge Noyes, was that a letter or a formal order—what was it, do you remember?

(Deposition of Cabell Whitehead.)

A. My idea was that it was an order, but it was on letter paper. I only glanced over it. I felt that my course was clear in the matter, and that the order did not concern me particularly, and he did not leave me a copy of it. I simply glanced over it, and the matter passed out of my mind.

Q. Was it typewritten?

A. No, sir, I think it was written in longhand; just an autograph letter; that is my impression now.

Q. Mr. Vawter stated it was from Judge Noyes?

A. Mr. Vawter stated it was from Judge Noyes, and my impression is that I read the letter signed by him.

Q. Subsequent to that time, was there anything to prevent, if you know, Alexander McKenzie, aside from this letter that you speak about, or aside from the verbal instruction that you had from the marshal, from going to the safe deposit boxes and taking out gold from them?

A. No, sir; he had access to them. He could have gone to them, previous to that.

Mr. GEARY.—Q. Previous to what?

A. Previous to the letter I am speaking of.

Mr. MADISON.—Q. After the letter?

A. After the letter, he could not.

Q. He could not? A. No, sir.

Q. What was there to prevent him from doing it?

A. In the first place, I would not have let him go. I would certainly have notified the marshal that he wanted to go in, and he would have had to have got another order from the court, or else shown an order from a higher court.

Q. You mean—

(Deposition of Cabell Whitehead.)

Mr. GEARY.—Let him finish his answer. Just ask him the question. Do not lead him.

A. That is exactly what I mean. I want to be clear upon the matter. I had determined on my course. It was fairly marked. I was there to protect myself. I had no interest in it. In the absence of an order of a higher court, I was bound to obey the court at Nome.

Mr. MADISON.—Q. By "a higher court," you consider the Circuit Court of Appeals?

A. Yes, sir; but I knew nothing about the higher court except from street talk.

Q. You had received no order from the court?

A. I had received no order from the court.

Q. If there was an order from this court, the Circuit Court of Appeals, directing him to turn over the property, or the golddust, there would have been no objection on your part?

A. If it had been properly served on me, there certainly would not have been.

Q. Was there any stipulation between the attorneys with respect to his going to the boxes or turning over the gold-dust, or anything of that kind?

A. That opens another phase of this somewhat complicated problem, which I am very glad to have elucidated or being allowed the opportunity to elucidate. There was a verbal understanding between the contending parties, and afterwards reduced to writing, by which I agreed to pay the bills for labor.

Mr. GEARY.—Q. You had better put the names in.

(Deposition of Cabell Whitehead.)

A. From 10 Above and 2 Below, on Anvil Creek, and the labor bills for the Pioneer Mining Company. I do not remember those numbers, Judge, if you do.

Mr. GEARY.—Discovery and No. 2 Below.

A. Mr. Metson and Mr. Knight, representing the defendants, and Mr. McKenzie, and Judge Geary, representing the plaintiff in the case, agreed that if I would advance the money to settle these claims for labor, that they would allow the amount of gold necessary to settle this indebtedness to be taken from these boxes, and that an order from the Court for this purpose would be obtained. I made these payments, and later on Mr. Knight and Mr. McKenzie met in the bank, and the order was obtained. Vawter was notified, as I remember now. This gold was taken out, and the indebtedness for 2 Below and 10 Above was settled. We were never able to get all parties to agree in the other case, and that was not settled until after the marshals came up. In regard to your question, I would state that there existed this verbal agreement, that when these parties agreed on the amounts and the arrangements, that the order would be gotten from the Court, and the boxes would be opened in the presence of all parties.

Mr. MADISON.—Q. So that, with the consent of Mr. Knight and the other attorneys for the defendants in those receivership cases, Mr. McKenzie, as far as you know, could have gone there and taken out the gold-dust?

A. If he had the necessary order of the Court.

Q. Did he say anything about the Court?

(Deposition of Cabell Whitehead.)

A. He said he could obtain an order from the Court for that purpose.

Q. Now, with respect to the conversation that you had with Mr. Joseph K. Wood?

A. I should like to add one thing further to my last answer. I would like to state that my business with these gentlemen was solely in regard to the delivery of the amount of gold necessary to settle my indebtedness. It did not go into any question beyond that at all.

Q. After your conversation with Joseph K. Wood, you went back and reported the result of the interview to the deputy marshal, and thereupon the deputy marshal forcibly broke the safe deposit box, did he not?

A. Yes, sir, with the assistance of a locksmith.

Q. And took the gold out? A. Yes, sir.

Q. Is it your recollection that Joseph K. Wood said, "Let them continue with their burglaries," or "Let them continue with their damned burglaries"?

A. I think he said, "Let them proceed with their damned burglaries." I do not think he said "continue"; I think he said "proceed"—"Let them proceed with their damned burglaries."

Cross-Examination.

Mr. GEARY.—Q. The fact about that agreement for the gold-dust is this: That at the time the first writ of supersedeas came in, McKenzie closed down the mines, and all of the men employed on the mines came to town, wanting their wages. Is that not the fact?

(Deposition of Cabell Whitehead.)

A. I do not know about the closing down of the mines. I know the men came to town and wanted their wages.

Q. There was a good deal of excitement as to whether they should be paid or not? A. Yes, sir.

Q. Then an agreement was made between McKenzie and all the attorneys in the case that he should issue time checks to the men for what was coming to them, you should cash them at the bank, and when the total amount was made up, that the attorneys would secure an order from Judge Noyes directing McKenzie to take from the gold-dust in the bank enough to pay your indebtedness. Is that not it?

A. Yes, sir, as I understood it.

Q. That was the only gold-dust you had any interest in?

A. That was all, except I was interested in it all to the extent of keeping myself clear of subsequent litigation.

Q. You had no interest in the results of the litigation, or the ownership of the dust?

A. Not the slightest.

Q. But after you received that order from Judge Noyes presented to you by Vawter, McKenzie could not have got into that vault, or had access to that dust, without having obtained or brought to you an order from Judge Noyes? A. No, sir, he could not.

Q. Don't you remember that Mr. Vawter gave instructions to the military guard in charge of the vault

(Deposition of Cabell Whitehead.)

that same day that McKenzie should not be allowed to go in there?

A. I do not know that of my own knowledge. I said in my direct examination that he might have done so.

Q. Let me see if I cannot refresh your memory: Do you remember when Knight and McKenzie were going there to get the dust, to pay the amount advanced by you, that you refused to let McKenzie go in until you got an order of the Court, and when I asked you why you refused to let him go in, you said the military guard would not let him go in; that as each guard was changed, the order was given from one to the other not to let him go in?

A. Yes, sir. I did not say I heard Vawter give that order.

Q. You knew after the 15th of September that the instructions were given to the guard, as it was changed, from time to time, not to let McKenzie go in?

A. Yes, sir. I think you will find that order came from Captain French.

Q. He was in command of the military?

A. These soldiers were part of the military. They would only take orders from their superior officer.

Q You do know, as a fact, that the military in charge of that vault, from the 15th of September, had instructions from Captain French not to let McKenzie have access to the vault?

A. I think that is correct. I know, furthermore, when this order was fixed up, we went into the vault without seeing Captain French or anyone else.

(Deposition of Cabell Whitehead.)

Q. You mean the order that Judge Noyes gave for taking out that dust? A. Yes, sir.

Q. All parties who were interested in the gold were present? A. Yes, sir.

Q. As a matter of fact, there was a guard placed there at your request?

A. Excuse me—not at my request. I told Judge Noyes, and I told Mr. McKenzie, I was perfectly able and competent to take care of my own money.

Q. At that time there was a fear in the town because of the character of the people there, that there might be an attack made on that vault?

A. It existed almost entirely with you people; never with me.

Q. It existed with people interested in the dust; they wanted it guarded?

A. Not all. I did not care anything about it.

Q. I mean people interested as claimants for the dust? A. Yes, sir.

Q. In fact, both the plaintiffs and defendants were anxious to have it guarded—to have a guard placed over the dust? A. I do not know anything about that.

Q. Did you not talk with the other people about it?

A. No, sir.

Q. The guard was placed there long before the supersedeas arrived? A. Yes, sir.

Q. Placed there as police protection?

A. Yes, sir.

Q. By reason of an order that you got Judge Noyes to give Major French?

(Deposition of Cabell Whitehead.)

A. Let me go into that, and give you the history of the whole thing.

Q. I think the history is in evidence.

A. You say I did it.

Q. I say you requested Judge Noyes to make the order, didn't you? A. No, sir, Mr McKenzie did.

Q. Mr. McKenzie did? A. Yes, sir.

Q. That was along in August sometime, I think.

A. Some time along in the middle of the summer, before there was any question raised.

Q. It was simply a matter of policing the bank?

A. Yes, sir.

Q. Before any writs arrived? A. Yes, sir.

Q. The guard continued under that order down to the 15th of September?

A. Yes, sir, later than that. Down to some time in October. It was continued to the time I left, the 21st of October—I think a few days afterwards.

Q. On the 14th of September there was quite a fracas in the bank? A. Yes, sir.

Q. Quite a disturbance? A. Yes, sir.

Q. Who made the disturbance?

A. I cannot say who started the disturbance. I can give you a history of the whole thing as far as I knew it.

Q. The people representing the defendants in large numbers came to the bank? A. Yes, sir.

Q. Armed? A. I cannot say that.

(Deposition of Cabell Whitehead.)

Q. What is your opinion as to whether they were armed?

A. I take it for granted, when a man goes to have a row, he goes with something to have it with.

Q. Especially in that country? A. Yes, sir.

Q. How many were there there?

A. Enough to fill the bank.

Q. And all partisans of the defendants in these actions?

A. I suppose so, Judge, but I cannot swear they were.

Q. What was their demand? What was the cause of their being there? What did they say?

A. The enforcement of this writ of supersedeas.

Q. They proposed to enforce it themselves, didn't they? A. That was my understanding of it.

Q. And if necessary they proposed to go into the bank, break the boxes, and take out the dust?

A. They said they would.

Q. They said they were prepared to go in and break the boxes and take out the dust? A. Yes, sir.

Q. In obedience to the writ? A. Yes, sir.

Q. That is the fact, is it not?

A. I think the fact is this: That they came down there to bluff me into it.

Q. To bluff you into giving them the dust?

A. Yes, sir.

Q. Those were the men representing the Lane and Pioneer Mining Company's interest? A. Yes, sir.

(Deposition of Cabell Whitehead.)

Q. They did declare, did they not, if you would not let them have that dust peaceably, they had force enough to go into the vault and get it?

A. No one came to me and stated that. It was talked of around town.

Q. There was talk, if they could not get it peaceably, they were there with force enough to take it forceably; was not that the subject of the general conversation and talk?

A. The position, as stated by one of them—I do not remember who—was this: That they had this order; it had been secured in a proper manner, and that the Court declined to enforce it; that the marshal would not enforce it, and they thought, as good citizens, they had the right to enforce the order of the Court. I had some argument on that line with somebody—I do not remember now who—and he gave that as a justification for the actions of his friends.

Q. Did you think it would be beneficial to your banking institution to have a mob like that go into your safe deposit vault and crack it or break it, and try to find their money?

A. No, sir. If I had thought so, I would probably have permitted them to go in.

Q. You, as manager of the bank, opposed their actions, did you not? A. Yes, sir.

Q. On behalf of the bank? A. Yes, sir.

Q. And the other depositors who had boxes in that vault? A. Yes, sir.

(Deposition of Cabell Whitehead.)

Q. Was not that guard increased that afternoon, on the vault? A. I think it was.

Q. At whose request was the additional guard placed at the vault that afternoon?

A. I requested that a squad of men be sent down to clean these people out and make them leave the bank.

Q. What time did you make that request?

A. I cannot remember the time.

Q. About noonday; about the time of the row?

A. Yes, sir. I talked with these people, and tried to get them to go out. They did not seem disposed to do it, and I sent a man up to ask Captain French to send a squad of men to clean them out.

Q. To clean them out, to protect the bank and the bank property.

A. They were interfering with my business.

Q. You sent for that guard because they were disturbing your business and threatening to wreck the bank, was not that it?

A. I don't know that any threats were made. They were standing around, obstructing business and interfering with people who had business with the bank.

Q. And would not allow people to go to the vault?

A. Any one went to the vault who wanted to.

Q. Their presence was objectionable to you as manager of the bank? A. Yes, sir.

Q. You sent for an additional guard to come down to remove them from the bank building?

A. Yes, sir.

(Deposition of Cabell Whitehead.)

Q. Was that not it? A. Yes, sir.

Q. What time of the day did that military guard come down—about noon time?

A. I think it was somewhere about 1 o'clock.

Q. How long after that was it that Marshal Vawter came to you with the order of the Court, directing the marshal to take charge of this disputed property?

A. It was either that afternoon or the next morning.

Q. It was either that afternoon or the next morning?

A. I cannot say which—within a few hours afterwards.

Q. When that order was presented to you, do you remember that the Lane people and the Pioneer Mining people expressed their fears that unless something was done to keep McKenzie out, he would take the gold-dust out and spirit it out of the territory?

A. The "Lane" people is a pretty broad statement. In fact, I never found out who the Lane people were.

Q. Tom Lane was in the bank?

A. No, sir, he was not in there then.

Q. Louis Lane,

A. Yes, sir, I saw him there.

Q. You saw Lafe Pence there? A. Yes, sir.

Q. You saw Sam Knight there? A. Yes, sir.

Q. Did they not declare they were afraid, if McKenzie had access to that vault, he would remove the gold-dust so that they could not find it? A. Yes, sir.

Q. Was that not the purpose for which they came in, to prevent him from removing the gold-dust?

(Deposition of Cabell Whitehead.)

A. Yes, sir.

Q. Did they not say they would be satisfied if they were assured McKenzie could not have access to it, if it was left with you, but their fear was it would be spirited away if he had access to the vault?

A. I never had a conversation with those people directly.

Q. I am asking you whether you heard them say in the bank that day—

Mr. MADISON.—Who do you mean by "they"?

Mr. GEARY.—I mean this armed guard.

Q. I am asking you if you do not know that the declarations they made were to this effect: That they had come there to prevent McKenzie spiriting the dust from the vault, because they feared he would do it.

A. Declarations of that sort were made, but I don't know that they were made by responsible people.

Q. Did you not hear Sam Knight say they did not propose to let McKenzie take the dust out?

A. Yes, sir.

Q. Was it not the fear that he would that prompted the mob to come there, rather than the desire to take the dust itself?

A. No, sir; I think they came down with the idea that they were going to put in their demand and walk off with it. I think they came there with the full expectation of getting it, and that it would be delivered to them.

Q. If they did not succeed in that, then their second

(Deposition of Cabell Whitehead.)

desire was to prevent McKenzie having access to it, for fear he would get away with it?

A. I hardly feel that I can swear to anything of that sort. That is my impression, anyway.

Q. That is your impression of what their wishes were?

A. Yes, sir.

Q. Don't you remember that on Saturday there was a good deal about trying to reach some agreement so that McKenzie would keep away from the dust, and that would quiet the fears of these people?

A. Yes, sir, I was requested by Lane to put a time-lock on the vault at 2 o'clock that afternoon.

Q. So that McKenzie could not get in?

A. So that McKenzie could not get in. I declined to do that.

Q. Did not Lane say to you they would be perfectly satisfied to let the matter stand if they could be assured that McKenzie would not have access to the vault?

A. Yes, sir.

Q. That is Charles D. Lane? A. Yes, sir.

Q. The President of the Wild Goose Mining Company?

A. I don't know who the officers are.

Q. Was it not because of that desire of those people to be assured that McKenzie could not have access to the vault, and after consultation with you—did you talk to Judge Noyes that day?

A. No, sir, I never saw Judge Noyes from the time I

(Deposition of Cabell Whitehead.)

went with him to see Captain French, except to see him on the street—I never talked to him.

Q. When Mr. Vawter brought you the letter signed by Judge Noyes, directing that McKenzie should not have access to the vault, that did not surprise you, did it, that Judge Noyes should have given such directions?

A. I do not know how to answer that.

Q. It was in furtherance of the wishes of the people who claimed the dust?

A. Yes, sir; I will admit that, that it was agreeable to them.

Q. That it was agreeable to them to have Judge Noyes make that particular command on you?

A. That is my impression.

Q. Taking the line that Charlie Lane had expressed that afternoon, that if they could be assured that McKenzie would not have access to the vault, they would be satisfied. Judge Noyes' order was really in furtherance of the wishes of the Lane people, as you understood their wishes at the time.

A. You ask questions which I have no means of answering except by street rumor. I do not know that they came from the Lane people at all. I will tell you what Mr. Lane said to me, or what Mr. Knight said to me.

Q. I say, taking the statement that Charles D. Lane made to you that they would be satisfied if they could be assured that McKenzie would not have access to the vault, and the fact was that you did receive this notice from Judge Noyes, you would then believe that that or-

(Deposition of Cabell Whitehead.)

der was made in furtherance of the wishes of the Lane people?

A. I would say that it was agreeable to the Lane people.

Q. The purpose of Judge Noyes making that order at that time directing the marshal to take possession of the gold-dust, and excluding McKenzie from the vault, was, you believed, in accordance with the wishes of the Lane people?

A. I did not have any belief. I was busily occupied with my own affairs, and I was very glad when the danger of a row was past.

Q. You were very glad when Judge Noyes gave that order to Vawter? A. Yes, sir.

Q. Because you knew all danger of a row between these parties was past? A. I believed it would be.

Q. That the Lane people and the Pioneer people would be satisfied with the dust being left in the situation it was, in the hands of the marshal, so long as McKenzie would not have access to it?

A. That was my understanding.

Q. About this matter of keys to the vault: You told us in your direct examination that Mr. Monckton came early in the afternoon with a squad of soldiers under the command of Major French. How many soldiers?

A. I thought a great many more than necessary; probably a half a dozen in addition to the two there.

Q. That was the first time that Mr. Monckton had come to you asking access to the vault?

(Deposition of Cabell Whitehead.)

A. Yes, sir.

Q. He came accompanied by the soldiers?

A. Yes, sir.

Q. And stated to you it was his intention to go in immediately to the vault and take the dust; is that right?

A. I will not say "immediately." He said it was his intention to carry out the order of the court.

Q. He was then prepared to carry it out?

A. Yes, sir.

Q. Did he have his locksmith with him?

A. No, sir, I think he was sent for later.

Redirect Examination.

Mr. MADISON.—Q. Prior to the time on or about September 14, 1900, these parties came to you with the order of this Court for the writ of supersedeas, and stated that they wished to carry out the writ and obtain this gold-dust, had that writ been served on Judge Noyes and Alexander McKenzie, and had they refused to comply with it?

Mr. GEARY.—If you know, you can answer it.

A. I do not know about that. Anything I could testify to in that connection would be hearsay.

Mr. GEARY.—As a matter of fact, it had not been.

Mr. MADISON.—Q. What time was it that these parties came to the bank on September 14th?

A. Somewhere about noon; between 12 and 1 o'clock. These dates I did not pay any attention to.

(Deposition of Cabell Whitehead.)

Q. That was the only time that they came?

A. There was more or less disturbance there on a couple of days, but the main difficulty was over at the end of the first day.

Q. When you speak about your presumption that Mr. Lane would be satisfied if Mr. McKenzie were not allowed to open the boxes or go to the boxes, do you mean that he was better satisfied than if the gold-dust was turned over to him in accordance with the order of this Court?

A I do not imply that at all. The impression which Mr. Lane left on my mind was that, rather than use force or any violence, if he could be assured that the gold would remain there, that he would await the action of the Court below.

Q. That was because the Court up there and Mr. McKenzie would not comply with the writ of supersedeas in delivering the property to them?

A. Yes, sir.

Q. And inasmuch as they refused up there to comply with the order of the Court, and deliver the property over, then, rather than use force, you presumed he would be satisfied if the property should remain there?

A. I feel very sure he was willing to do that; that he was willing to allow the gold to remain there, if he could feel it was secure until they could get a deputy marshal in there to execute the order of the Court. He was very clear on that.

Q. None of the parties used any force or threats to-

(Deposition of Cabell Whitehead.)

wards you, did they, or towards your property there, when they came there?

A. I do not know. I do not think anyone wanted to hurt me, personally. I think they wanted to get that gold pretty bad.

Q. When I speak of "the parties," I mean any of the defendants in those cases; any of the authorized parties representing them; did they make any threats towards you?

A. Not personally; no. The threat was simply to go in and execute the order of the court. It was always on that ground. It was not to do a thing in violence, but to execute the order of the court. My difference with them was that I could not see that a private party had a right to constitute himself an officer of the court. I took the ground that until I was properly served by the officers of the court, or a party that I recognized as an officer of the court, that my hands were tied; that if I delivered this gold into the hands of these people, and subsequent litigation determined it did not belong to them, that I would be liable for it, and in that position it was my duty to await until I was relieved of this responsibility and the Court assumed it.

Q. All of this breach of the peace, if there was any, and trouble arose from the fact that the parties up there would not carry out the orders of this Court?

A. That is as I understand it.

(Deposition of Cabell Whitehead.)

Recross-Examination.

Mr. GEARY.—Q. You did not understand, however, when they first came to the bank at noontime that any writs had been served on anyone.

A. I did not know anything about it. I did not know the men were in town. I was called from up above, and dropped down into this wiggling mob.

Q. That is the first thing you knew about any writs being in town?

A. That is the first I knew.

Q. You did not know that any writs were served on Judge Noyes, McKenzie, or anyone else?

A. No, sir, I did not know anything about that.

Mr. MADISON.—Q. When you speak about the parties being armed, you did not see any arms?

A. I did not see any arms.

Mr. GEARY.—Q. What is your impression, from the crowd that was there and your knowledge of the men which made up that crowd, were they armed or unarmed?

A. I think some of them were armed and some unarmed.

CABELL WHITEHEAD.

Subscribed and sworn to before me this 17th day of May, 1901.

E. H. HEACOCK,

United States Commissioner for the Northern District of California, at San Francisco.

In the United States Circuit Court of Appeals, for the Ninth Circuit.

JAFET LINDEBERG,
Defendant and Appellant,

vs.

ROBERT CHIPPS,
Plaintiff and Appellee.

No. 631.

In the Matter of the Application for a Rule Upon Joseph K. Wood, the United States District Attorney, for the Second Division of the District of Alaska, to Show Cause, if Any There be, Why He Should not be Punished for Contempt of the United States Circuit Court of Appeals for the Ninth Circuit, for Obstructing the Enforcement at Alaska of a Certain Writ of Supersedeas Issued in the Above-entitled Cause.

Commissioner's Certificate to Deposition of Cabell Whitehead.

United States of America,
Northern District of California,
City and County of San Francisco. } ss.

I certify that, in pursuance of the order of the Court aforesaid, made and entered in the above-entitled matter and cause, on Monday, the 13th day of May, 1901, a certified copy of which order is hereunto prefixed, that on the 16th day of May, 1901, at 11 o'clock A. M., before

me, E. H. Heacock, United States Commissioner at San Francisco, California, designated in said order as the Commissioner for the purpose of taking the deposition of Cabell Whitehead, the witness named in said order, at my office, in Room 87 in the United States Appraisers' Building, in the city and county aforesaid, the said Cabell Whitehead personally appeared, and F. D. Madison, Esq., appeared as amicus curiae in support of the order to show cause aforesaid, and Thomas J. Geary, Esq., appeared in his own behalf, and the same Cabell Whitehead being by me first duly cautioned and sworn to testify the whole truth, and being carefully examined, deposed and said, as appears by his deposition hereto annexed.

And I further certify that said deposition was then and there taken down in shorthand writing by Clement Bennett, a competent stenographer and disinterested person, under my personal supervision, and by him put into typewriting, and after it had been so put into typewriting it was carefully read over by said witness and sworn to and subscribed by him in my presence.

I further certify that I have retained the deposition in my possession until I now seal the same and return it to the Clerk of the court aforesaid for which it was taken.

In testimony whereof, I have hereunto set my hand at my office aforesaid this 20th day of May, 1901.

E. H. HEACOCK,

United States Commissioner, at San Francisco, and Commissioner Designated by the Court Aforesaid for the purpose of Taking said Deposition.

In the United States Circuit Court of Appeals, for the Ninth Circuit.

In the Matter of ARTHUR H. NOYES. } No. 701.

In the Matter of THOMAS J. GEARY. } No. 702.

In the Matter of JOSEPH K. WOOD. } No. 703.

Transcript of Proceedings Before Commissioner at Alameda County Jail.

Alameda County Jail, Thursday, May 23, 1901.

Before Hon. E. H. HEACOCK, United States Commissioner.

Appearances:

F. D. MADISON, Esq., as Amicus Curiae in Support of the Order to show Cause.

THOMAS J. GEARY, Esq., for Alexander McKenzie.

Mr. GEARY.—Now, Mr. Commissioner, I ask that the taking of this deposition be postponed. Mr. McKenzie is not in a condition to be examined, and, as his attorney, I ask that the matter be continued until some other day. He is physically unable to testify, and I ask that Dr. Tisdale be called as a witness.

Mr. MADISON.—My examination in chief will be very brief, and then the cross-examination can be continued to some other day.

Mr. GEARY.—We will come here any day you want, but Mr. McKenzie is physically unable to testify to-day. I will ask the Commissioner to examine Dr. Tisdale as to the man's condition.

The COMMISSIONER.—Suppose we swear Mr. McKenzie, start in with the taking of the deposition, and see how he gets along? Then, if any reason appears to continue the examination, the matter can be then considered.

Mr. GEARY.—I will make a motion to continue the examination now. The order of the Court is that you shall continue it from day to day. I will show that this man is not in a condition to be examined now, and I ask to have Dr. Tisdale sworn.

Testimony of C. L. Tisdale.

Dr. C. L. Tisdale, having been duly sworn, testified as follows:

Mr. GEARY.—Q. You are the county physician of Alameda county? A. I am.

Q. You have been in attendance on Alexander McKenzie how long? A. Since he came here in February.

Q. You have met him how frequently since then?

A. Practically every day.

Q. State his present condition physically, Doctor.

A. He is in a very nervous condition. Mr. McKenzie has a dilated heart; a very weak heart. He is suffering at present from insomnia and nervous collapse, superinduced

(Testimony of C. L. Tisdale.)

by this condition of his heart—this dilated heart and weak heart.

Q. Doctor, in your opinion, what is his mental condition to-day?

A. His mental condition for the last week has not been good. He has not been clear in his mind for a number of days—uncertain. I should say that his mental condition was poor.

Q. How as to his memory? A. Poor.

Q. What is the cause of it?

A. His nervous condition, induced by confinement. He has failed a good deal in the last two or three weeks, I will say.

Q. Do you think he could, with safety, be subjected to an examination to-day as a witness?

A. I do not think so.

Q. What results might probably result from it?

A. Collapse.

Cross-Examination.

Mr. MADISON.—Q. Are you aware, Doctor, that yesterday Mr. McKenzie talked over the telephone to San Francisco on matters of business?

A. I am not aware of it, no. I saw him yesterday morning. I saw him twice the day before. I am not aware of anything of that kind.

Mr. McKENZIE.—I want to state to the gentlemen that that is true, I did. I had a boy come in here. I wanted to get Mr. Knight's firm name. I did not call him up. The boy called him up, and I got out of bed and went

(Testimony of C. L. Tisdale.)

to the 'phone and asked him about this money matter yesterday forenoon.

Mr. MADISON.—Q. Do you think, Doctor, that his condition is such that a few questions, say a dozen or more, would have any serious results upon him?

Mr. GEARY.—It would depend upon the questions.

A. I do not think, Mr. Madison, Mr. McKenzie is in a condition to do himself or the Court either any justice today. I think that is a fact. In the nervous mental condition he is in, as well as physical prostration, I would not want to take his testimony myself for anything practically in the way he has been in the last two or three days.

Mr. MADISON.—Q. You do not think a few questions would seriously interfere with his condition?

A. It might. No man can prophesy as to what might happen from anything. I simply state the facts as I know them from Mr. McKenzie's physical condition. I consider he is really in a serious, precarious condition, and has been so for a number of days. I have never seen a man go to pieces as McKenzie has in the last week. He has been in bed several days now. He eats nothing at all, so he tells me, and the jailer tells me. That I do not know of my own knowledge. I am told so around the jail. He does not sleep, except by giving him hypnotics, and then only sleeps half an hour at a time. The chief jailer tells me he is up and down all night The night before last, I believe it was, he told me he himself was up practically all night with McKenzie. He told me so in the morning

(Testimony of C. L. Tisdale.)

when I came in. He said he really was frightened, and he telephoned me this morning at half-past six, and wanted me to come over and see him in the condition he was in. He was frightened.

Q. A few questions, however, which would not affect his interest particularly, would not have any serious effect on his condition, would it?

A. As I say, no man can prophesy as to the outcome of anything. I simply state the condition he is in, believing it to be true, and leave it there. I do not know what the questions might be, of course. You can ask him how he feels, and what the weather is, but you know as well as I know, if a man is put on a strain, that it affects him as it would not to simply ask him a few simple questions that are of no importance to him or anyone else.

Mr. GEARY.—There is not any urgency about this examination. The return day is not until the middle of October, and no citations have been served yet.

Mr. MADISON.—There is urgency, because Mr. McKenzie is the only witness.

Mr. GEARY.—He will give any bond you want for his appearance in court on any day you want to examine him.

Mr. MADISON.—I should like to ask him a few questions at this time.

Mr. GEARY.—There is no rush about it. The writ tells the Commissioner that he may continue it from day to day. There is no return day until the 14th of October. We will give any bond for Mr. McKenzie's appearance any day you want him.

(Testimony of C. L. Tisdale.)

The COMMISSIONER.—The intimation of Mr. Madison is based on the testimony of the Doctor, not of the danger of Mr. McKenzie being able to testify if living, but that suffering with heart trouble, that he is the only witness to certain material facts. Therefore, he is pressing on account of that.

Mr. GEARY.—Yes, but the Doctor says he is not in a mental condition to testify, and he would not take his testimony. We will agree that Mr. McKenzie shall be present on any day that you want him.

Mr. MADISON.—I should like to ask him four or five questions anyway.

Mr. GEARY.—We will ask for a continuance, and ask to have a ruling upon that. We ask to have the matter continued until to-morrow at 2 o'clock.

Mr. MADISON.—I object to a continuance.

The COMMISSIONER.—What likelihood is there of his being any better to-morrow at 2 o'clock.

Mr. GEARY.—We will ask the Doctor about that, or the next day.

Q. Doctor, what is the prospect of any improvement in his condition?

A. I should say, Mr. Geary, that it will be several days before he is in a condition to really give any testimony that will be of value. It seems to me so.

Q. What do you mean "of value"?

A. Clear, concise testimony, that I would be willing to take, if I had any money up. His mental condition is

(Testimony of C. L. Tisdale.)

such—the talk I have had with Mr. McKenzie in the last two or three days has confirmed the opinion that Mr. McKenzie's mind is not clear.

Q. His testimony to-day would not be reliable?

A. No, sir, I should not take it. I do not know what you gentlemen want. I would not take it. I will say, Judge, in relation to this, that a month ago, in talking with Mr. McKenzie, as I have of course done, coming in here and seeing him every day, he could follow an argument. He could talk with you intelligently and concisely. He did not ramble and wander. The last two or thre days —the day before yesterday, and yesterday and to-day— he seems to have got wrought up into that nervous state that in talking to him he cannot follow the thread of an argument. You start to talk to him, and he is somewhere else in a minute, and he is gone. It is hard work to keep him on any line of argument at all. That is what I mean in reference to his testimony not being reliable and of value. His mind has not been clear. He has not been right in his head.

Mr. MADISON.—I will proceed and see how far we can go along.

Mr. GEARY.—You do not mean to say you are going to take that kind of testimony to prosecute anyone in a Federal court and try to convict anyone on the testimony of an incompetent witness. Let him get his senses back, and if he knows anything, he will tell it to you. He will not lie about it.

(Testimony of C. L. Tisdale.)

The COMMISSIONER.—Q. Doctor, I understand that, in your opinion, the asking and answering of four or five questions which might be put to him at this time will probably seriously endanger his health, resulting in a collapse or anything of that kind?

A. I could not go as far as that. I can simply say this, as I have just stated, that his mental condition is weak. I do not consider any testimony Mr. McKenzie would give at the present time to be reliable testimony. I would not take it, if it was my personal business. I do not know anything about what the business in hand is. I know nothing about the merits of it one way or the other, or what questions you propose to ask him, and have no interest in it one way or the other, but it strikes me that it is possible that certain questions which might be brought up here that might affect Mr. McKenzie or others, that you might ask, would be of that nature that would affect Mr. McKenzie seriously—the shock of those questions—and the attempt to answer them, and we might have, as we have had here, an attack of heart failure. That is the idea. I do not know that there will be, but that is my candid opinion.

The COMMISSIONER.—I think I will continue the matter until to-morrow at 2 o'clock, and suggest that the statements made here by the Doctor be reported to the Court to-morrow morning. They seem to cover the whole ground, as far as his physical condition is concerned, and the Court will then take such action, as it may deem proper in the premises. If it does not instruct me not

(Testimony of C. L. Tisdale.)

to proceed upon the same state of facts, I shall be here and proceed with the taking of the evidence. I think, in my position as a special Commissioner to take the testimony, that is the wisest course to pursue. It seems to me a serious question, based upon the Doctor's testimony. No one wishes to do anything that will endanger the physical condition of the witness. Superadded to that is the statement of the Doctor that his testimony would hardly be intelligent, and therefore not credible. I presume as to that the Court will be the best judge. I will continue this matter until to-morrow at 2 o'clock, and the statements made to-day will be reported to the Court to-morrow morning, for such action as it may deem proper, and unless the Court instructs me not to proceed with the taking of the deposition, we will continue the taking of the deposition to-morrow.

Mr. MADISON.—I understand that Mr. McKenzie will be here to-morrow at 2 o'clock?

Mr. GEARY.—If Mr. McKenzie is out of here to-morrow, we will give you his address, and he will be ready to attend at any time and place you want him.

The COMMISSIONER.—What question can there be about his being here?

Mr. McKENZIE.—If I get out of here, wherever I am, you can come to me.

The COMMISSIONER.—That is raising a new question.

(Testimony of C. L. Tisdale.)

Mr. GEARY.—He is not going to leave the State. You need not worry about that. You will have all the chance you want to examine him.

Mr. MADISON.—I have a subpoena in my pocket to subpoena him, in case he leaves here.

The COMMISSIONER.—Is there any question about that?

Mr. GEARY.—They expect him out to-night. I will give any bond for his appearance, at any time or place that may be named. We will probably ask bonds of your people to be here to testify for us.

The COMMISSIONER.—I will continue this matter until to-morrow, and in the meantime will report these proceedings to the Court.

United States of America,
Northern District of California. } ss.
City and County of San Francisco.

I hereby certify that in pursuance of the order of the Court made and entered in the above-entitled matter and cause, on the 23d day of May, 1901, I attended at the Alameda County Jail, at the hour of 2 o'clock P. M. of that day, when the foregoing proceedings took place.

All of which is respectively submitted.

E. H. HEACOCK,

United States Commissioner at San Francisco, and Commissioner Designated by the Court Aforesaid for the Purpose of Taking said Deposition.

[Endorsed]: Nos. 701, 702, 703. United States Circuit Court of Appeals, for the Ninth Circuit. In re Arthur H. Noyes. In re Thomas J. Geary. In re Joseph K. Wood. Transcript of Proceedings before Commissioner at Alameda County Jail. Filed May 24, 1901. F. D. Monckton, Clerk.

At a stated term, to wit, the October term, A. D. 1900, of the United States Circuit Court of Appeals for the Ninth Circuit, held at the courtroom, in the city and county of San Francisco, on Thursday, the twenty-third day of May, in the year of our Lord one thousand nine hundred and one. Present: The Honorable WILLIAM B. GILBERT, Circuit Judge; Honorable WILLIAM W. MORROW, Circuit Judge; Honorable THOMAS P. HAWLEY, District Judge.

In the Matter of ARTHUR H. NOYES. } No. 701.

In the Matter of THOMAS J. GEARY. } No. 702.

In the Matter of JOSEPH K. WOOD. } No. 703.

Order for Taking Deposition of Alexander McKenzie.

It is ordered that the order entered herein on the 22d instant, providing for the taking of the testimony of

Alexander McKenzie be, and the same is hereby, vacated and set aside.

Whereupon, upon motion of F. D. Madison, Esquire, amicus curiae, it is further ordered that the testimony of said Alexander McKenzie be taken herein before the Honorable E. H. Heacock, United States Commissioner, who is hereby expressly appointed to take the same, at the county jail of the county of Alameda, California, in the city of Oakland in said county and State, commencing this day, Thursday, the 23d day of May, 1901, at the hour of two (2) o'clock P. M. The taking of such testimony shall be continued from time to time until the same shall be concluded and sealed and returned to this Court, such return to be made immediately upon the close of the taking of such testimony.

I hereby certify that the foregoing is a full, true and correct copy of an original order made and entered in the within entitled matters.

Attest my hand and the seal of the said United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, this 23d day of May, A. D. 1901.

[Seal] F. D. MONCKTON,
Clerk.

[Ten Cents U. S. Int. Rev. Stamp. Canceled.]

Stipulation as to Taking Deposition of Alexander McKenzie.

Friday, May 24, 1901.

It is stipulated and agreed between the respective counsel that instead of going to the Circuit Court of Appeals for a ruling as to the propriety of taking Alexander McKenzie's testimony, in consequence of his illness, that the deposition shall be proceeded with at the Alameda county jail on Saturday, May 25, 1901, at the hour of 10 o'clock A. M.

Deposition of Alexander McKenzie.

Saturday, May 25, 1901.

Alexander McKenzie, having been duly sworn, testified as follows:

Mr. MADISON.—Q. Your name is Alexander McKenzie? A. Yes, sir.

Q. Mr. McKenzie, on July 23, 1900, I believe you were appointed receiver in the case of Chipps vs. Lindeberg et al., pending in the District Court of Alaska, by Judge Noyes? A. Yes, sir.

Q. And also in the cases of Rogers vs. Kjellman, Melsing vs. Tornanses, Comptois vs. Anderson, and Webster vs. Nakkella? A. Yes, sir, that is so.

Q. Under that appointment I believe you were directed, as receiver, to work certain mining and placer claims near Nome, Alaska? A. Yes, sir.

Q. And you proceeded with and did work those claims, and extracted gold from the claims?

A. Yes, sir.

Q. On August 20, 1900, that is the date, I believe,

(Deposition of Alexander McKenzie.)

Judge Noyes, in each of those proceedings, I believe, directed you, as receiver, to deposit the gold-dust taken by you from each of those claims in the safe deposit vaults of the Alaska Banking and Safe Deposit Company.

A. I cannot tell you the exact date, but that is true.

Q. On or about that time? A. Yes, sir.

Q. You thereafter rented six or eight safe deposit boxes in the vaults of that company, and deposited such gold-dust, pursuant to the order of the Court, and on or about September 14, 1900, you had on deposit there, in those boxes, in the neighborhood of $180,000 or $200,000, did you not?

A. I took out more gold-dust than that.

Mr. GEARY.—The question is, how much you had in the boxes at that time.

Mr. MADISON.—Q. About the time that the writ of supersedeas arrived in Nome.

A. I guess that is right, if the record shows it.

Q. About that amount?

A. Yes, sir; I sold some, you know.

Q. On September 14, 1900, the writs of supersedeas issued by the Circuit Court of Appeals in each of those cases, I believe, reached Nome, and were served upon you, were they not? A. Yes, sir.

Q. There was a writ of supersedeas in the case of Chipps vs. Lindeberg, which was served at about 12 o'clock noon of that day; about noon time.

A. Can I ask you a question? Q. Yes.

(Deposition of Alexander McKenzie.)

A. You know there are two cases pending over me now. Am I testifying here against myself?

Q. No. I have no intention of using any of your testimony in any other case than the contempt proceedings instituted against Joseph K. Wood and Arthur H. Noyes.

A. You know there are four cases, and only two have been tried.

Q. I heard of that from Mr. Geary two days ago. I did not even know those cases had not been disposed of. A. Are they not pending over me now?

Q. I do not know. I was informed by Mr. Geary they were. I do not intend to use the testimony in either of those cases, if they are pending. As I say, it is only to be used in the cases against Joseph K. Wood and Arthur H. Noyes. A. Very well, go on.

Mr. GEARY.—Q. The question is now, if you did not receive the writ about noon time.

A. The writ of supersedeas came in on the 14th. It came about noon time; 12 or 1 o'clock, yes.

Mr. MADISON.—Q. Between 12 o'clock noon, or thereabouts, and 3 o'clock in the afternoon of the 14th of September, 1900, the writs of supersedeas issued by the Circuit Court of Appeals in all of those cases?

A. In the Comptois case and in the Chipps case, they were served on me along between 12 and 2 o'clock, not in the cases that I have been tried for and convicted. I have no memory when those papers were served on me. It was a long while after. I cannot on my oath

(Deposition of Alexander McKenzie.)

tell you. Those cases are disposed of and are out of the way, but my impression is those papers were not served on me that day at all, but in the Chipps case and the Comptois case they were served on me. Those are the two that are hanging over me, but in the ones disposed of, I have no recollection when that order was served on me. I think it was the next day. I would not be positive. It was not served on me at the same time.

Q. Now, I will ask you with respect to the service on you of the writs in the Chipps case and the Comptois case, how soon thereafter you talked with Judge Noyes, if you did talk to him?

A. I saw Judge Noyes Sunday. What date would that be?

Q. The 16th. Did you not see him on the 14th or the 15th?

A. No, sir, I did not. Sunday was the first time I saw Noyes; Sunday afternoon.

Q. Where did you see Judge Noyes?

A. He was sick. I saw him in his bedroom in the Golden Gate Hotel.

Q. Did you have any talk with him with respect to the service upon you of the writs, and the direction or order of the Circuit Court of Appeals therein contained?

A. I did.

Q. State what that conversation was.

A. I talked with him. There was some clean-ups came down from Discovery, and I told him the military

(Deposition of Alexander McKenzie.)

had taken possession of it, and I told him what I had done about turning over the money, stopping work under the advice of my counsel, and he stated he thought that was right, to shut down and discharge the men. I told him what I had done, and he approved of it. I asked him about the gold-dust. He said that Judge Morrow's order and the supersedeas issued by the clerk conflicted; that Morrow's order did not mention gold-dust, and that the clerk's supersedeas did. He said that there was a difference between Morrow's order and the clerk's order, and that he was investigating that or looking into it.

Q. Is that all he said?

A. That was all the conversation we had.

Q. Did he tell you that the writ of supersedeas was void?

A. I don't remember him using that language.

Q. When he said that the writ conflicted with the order, did he mean thereby that the writ was issued by the clerk without authority from Judge Morrow?

A. I could not say as to that. He stated that the language of the writ and the language of the order was different. That is the way I understood it.

Q. Did he say, therefore, that the writ was issued without authority?

A. He did not say that it was issued without authority to me.

Q. Did he advise you not to turn over the gold-dust?

A. No, sir, he said he was looking into it. I tell

(Deposition of Alexander McKenzie.)

you, I followed Mr. Geary's advice on this matter all the way through. I had not seen Noyes until after the thing was practically over.

Q. Did not Judge Noyes say at that interview that in his opinion the order appointing the receiver was not appealable?

A. We had no conversation about that at all at that time.

Q. How long did your conversation with Judge Noyes last upon that occasion?

A. I don't think it lasted five minutes; it was not over four or five minutes.

Q. Did the Judge direct you not to turn over the gold-dust?

A. He did not; that is, I don't remember him directing me not to turn over the gold-dust.

Q. In an answer filed by you in the matter of your own contempt in the case of Kjellman vs. Rodgers, there is stated therein, "That on the 15th day of September, Arthur H. Noyes, Judge of said District Court of Alaska, ordered and directed the United States marshal for the District of Alaska, Second Division, to take possession of the portions of said vault containing the gold and gold-dust held by this defendant as receiver, place a guard over it, and not to permit this defendant access to said vault." That is true, is it?

A. That is, the marshal told me so, but Noyes never told me anything about it. That is true; that is, that the marshal made that statement to me. When I came

(Deposition of Alexander McKenzie.)

to get into the vault, Dr. Whitehead told me that I could not get in.

Q. You mean Marshal Vawter? A. Yes, sir.

Q. When did Marshal Vawter tell you that?

A. I cannot exactly tell you.

Q. With relation to the time that you saw Judge Noyes on the 16th, do you remember whether it was before or after that time? A. It was after that time.

Q. After the 16th? A. Yes, sir, I know it was.

Q. Do you remember how long after the 16th?

A. I cannot tell you exactly.

Q. I will refresh your memory by stating that it is my understanding that on the 17th of September, Judge Noyes made an order staying further proceedings in these cases. Do you recollect whether it was after that order had been made by Judge Noyes that Marshal Vawter told you this?

A. Well, you see, the military took possession of the gold-dust or of the vaults, and after they took possession of the vaults, I did not pay any attention to it. I went in the vault on Sunday, the 16th.

Q. Did you see Marshal Vawter there?

A. No, sir, I did not see him there Sunday, but there were soldiers there, and they would not let me in, and Captain French, who was in charge of the soldiers, put the money in the vault and signed his name on the book. He signed a receipt for the money. They let French put the money into the box; it was a separate box, and they let him put it in there, but it was put in in my

(Deposition of Alexander McKenzie.)

name and his name, so that I could not get it out if I wanted to. That was Sunday about 4 or 5 o'clock, and it was after that that I saw Noyes and reported that to him. I told Noyes at the time what had happened.

Q. I have not got the date yet nor the time, as near as you can recollect, when Marshal Vawter told you that he had been ordered by Judge Noyes not to permit you access to the vault.

A. That was the first time that I had notice that I could not get into the vaults, when I went with that gold-dust. Whether Vawter told me before or after, I cannot tell you. There was so much fuss.

Q. What did Vawter say?

A. He said that Noyes had written him a letter to take charge of the gold-dust, I think, and not to let me or any one else in there. I believe that is what he said to me.

Q. Did he show you the letter?

A. I don't remember that he did.

Q. Did you ever see the letter?

A. I could not say that I did.

Q. Did you ever have any talk with Judge Noyes about the letter?

A. I never did; I never discussed it with him.

Q. It was because of that order or letter written by Judge Noyes that you did not comply with the writs of supersedeas served upon you, was it not?

Mr. GEARY.—You can decline to answer that, if you want to, if you think the answer would criminate you.

(Deposition of Alexander McKenzie.)

You can tell just why you did not comply with the writs, if you have any answer to give to it.

A. Well, the military had the gold-dust in their possession, and there was an order there, a stipulation as I understand it, by the defendants and the plaintiffs, that the gold-dust should be deposited in this vault, and that I could not get it without an order of the Court, and I never felt that I could at any time have gotten any of that gold-dust without an order of the Court, and I never took a dollar's worth of it without an order.

Q. You needed the consent of the defendants in the case before you could get the order?

A. Yes, sir; the defendants. The men were not paid, and we had to get a stipulation from the defendants and a stipulation from the plaintiffs, and an order from the Court, to get that gold-dust out. I could not have turned over the gold-dust at any time without having an order from that Court and a stipulation. That was the process we had to go through. Mr. Knight had to stipulate and Mr. Metson, and Hubbard and Beeman all stipulated that this money should come out, and then the Judge made an order. That was the process of getting it out. I never thought that I could at any time have got into the vault.

Q. You knew you could get the consent of the defendant to turn the money over to the defendant?

A. Yes, sir.

Q. Your only doubt was as to whether you could get the order of the Court?

(Deposition of Alexander McKenzie.)

A. The order of the Court, yes. I had to have an order of the Court before I could get that money, according to the previous arrangement.

Q. You did not think you could get the order of the Court after you got the consent of the defendant?

A. It appears Mr. Knight testified to that, that he asked the Court, and the Court declined.

Q. That was your belief, too, that the Court would decline although the defendant consented?

A. I had no means of having any opinion about it. Mr. Geary was attending to the legal end.

Q. You say you did not think you could get the gold-dust without such a stipulation and order? You knew you could get the stipulation?

A. I could get it from the defendants, but not from the plaintiffs. The plaintiffs objected.

Q. The only question in your mind then was the order of the Court?

A. The order of the Court and the plaintiffs. The defendants were willing all the time.

Q. Did you ever ask the plaintiffs?

A. Mr. Geary can answer that.

Q. Did you ever ask them?

A. There was talk about it, yes. They objected to my turning it over.

Q. That is, Messrs. Hubbard, Beeman & Hume?

A. Yes, sir, they objected to my turning over the money.

Q. Did Judge Noyes object also?

(Deposition of Alexander McKenzie.)

A. I never talked with Judge Noyes about it.

Q. Now, the deputy marshals, Mr. Monckton and Mr. Burnham, arrived in Nome, October 15, 1900, I believe, and you were taken into their custody about 9 o'clock of that morning, were you not?

A. Yes, sir.

Q. By these deputy marshals? A. Yes, sir.

Q. At that time where were the keys of the safe deposit boxes which contained the gold-dust taken by you as receiver from these claims?

A. They were in my possession.

Q. How many keys were there, about?

A. I had a private box of my own, and I had the keys of the safe deposit; that is where I had the gold-dust, and I had my pocket-book that I carried with notes and valuable papers. I had it all in my pocket, all together, you know; that is, I had receipts and checks and notes, and things of that kind, memorandums, and I had them in my pocket-book when I was arrested. If you will permit me, I will tell you the story.

Q. Very well.

A. Mr. Monckton and Mr. Burnham and Mr. Metson came in. Mr. Metson came into the room where I was at breakfast, and he sat down at the table. I was eating breakfast. He said there was a warrant for my arrest for contempt. I said, "All right, I will go out." After I had ate my breakfast, I went out and the marshal took me. I said I would go out and surrender peaceably. I went out and they took me down to Mr. Geary's office.

(Deposition of Alexander McKenzie.)

They started to read the warrant to me. I said I would waive the reading, and I would go to 'Frisco on my own account. They took me down to Mr. Geary's office and put me under arrest, and I had the keys in my pocket-book, and Joseph Wood came—

Q. (Interrupting.) That is Joseph K. Wood?

A. Yes, sir. (Continuing.) —and I handed him my pocket-book and all these keys, and my private key, and told him that I wished he would take possession of them and keep them for me, as I was afraid they were going to take me to jail, and I did not want them to get possession of my private papers, and my private affairs, and I turned them all over to him.

Q. What time of the day was that—what hour, if you recollect?

A. I could not tell you. I suppose, if I was arrested about 9 o'clock or 10 o'clock, that it must have been between 10 and 11; between 10 and 11.

Q. Now, when you left the hotel and went down to Mr. Geary's office, on your way you met Mr. Wood, did you not?

A. No, sir, I don't think I did. I don't believe I was permitted to talk to anyone.

Q. Did you not meet Mr. Wood, step aside and have a little consultation with him?

A. I did not, All the talk I had with Wood, I did on my own accord, because I had some papers that I did not want to fall into the hands of Vawter, if I was going to be put in jail up there. I called him and asked him if

(Deposition of Alexander McKenzie.)

he would take possession of the papers and the keys, and turned them over to him for safekeeping.

Q. You were the sworn officer of the court at that time, the receiver, and as such receiver, as the officer of the court, you had these keys of the safe deposit vaults in your possession, did you not?

A. I had the keys all the time.

Q. Now, as such sworn officer, how came you to surrender these keys to Mr. Wood without permission or consent of the Court appointing you?

A. I supposed he would do what was right by them. I supposed he would take possession of them. I did it for safekeeping. At that time I had no idea they were going to break into the bank at all; not the remotest idea.

Q. You knew that they could not open safe deposit boxes containing the gold-dust without the keys?

A. I did not know at that time they were going to break into the boxes or that they were going to take the gold-dust. I thought at that time that the gold-dust was going to remain there, as I was under the impression that the supersedeas was a stay of proceedings, and that until the final settlement of this case, it would remain there. That was my impression at the time. That is what I was advised by my counsel, and that is the impression I had in my mind. I did not know they were going to break into the boxes at that time. I had no means of knowing.

Q. Without breaking into the boxes, there was no

(Deposition of Alexander McKenzie.)

way of obtaining this gold-dust, except with these keys?

A. They did obtain it.

Q. I say, without breaking in?

A. No, sir, they could not have got it without breaking in.

Q. There was a master key, and these keys, and both keys had to go into the box at the same time?

A. There were two sets of keys. In fact, up there the safe deposit is not run like any other safe deposit that I ever saw. That is why I was so careful about those keys. In a safe deposit, when you go in you have to have a password. Whitehead never had a password in his safe deposit, and anybody who had a key could say, "I want to get into such and such a box," and he could have got it. There was no signature, no check of any kind. I was fearful all the time that these keys might fall into the hands of some person, and therefore I carried them on my person.

Q. Your understanding was the understanding of Mr. Wood, too, so far as you know?

A. What was that?

Q. Your understanding about the situation was the same understanding that Mr. Wood had, so far as you know?

A. I do not know what his understanding was.

Q. Now, did Mr. Burnham, the deputy marshal, in your presence, or Mr. Monckton, demand the keys of Mr. Wood that morning after you had delivered them to Mr. Wood? A. Let me tell you the story.

(Deposition of Alexander McKenzie.)

Q. If you will, please.

A. You are very kind. Mr. Monckton asked me if I had the keys. I said, "No." He said, "Who has got them"? I said, "Mr. Wood." Mr. Wood came out of the room, or passed through the room.

Q. At that moment?

A. Shortly afterwards. Shortly afterwards he passed through Mr. Monckton, I think, asked him if he had the keys, or requesed him to give him the keys, and Wood said, "I will see about that later," and passed right on and never stopped. I think it was Mr. Burnham who talked to him. That is the situation just as it was. It was either Burnham or Monckton, but my impression is he just passed right through and said, "I will see about that later."

Q. Do you recollect this conversation at that time: Mr. Burnham asked you for the keys. You said you did not have the keys; that you had turned them over to Mr. Wood, and about that time Mr. Wood came into the room, and Mr. Monckton said to him, "Mr. Wood, we understand that you have the keys to the boxes in the vaults that contain the gold-dust that has been deposited in those boxes to the credit of Mr. McKenzie, as receiver," and that Mr. Wood said he did not know whether he had the keys or not?

A. My impression is that Mr. Wood said, "I will see about that later." I don't think he denied having the keys.

Q. And then Mr. Monckton repeated the question,

(Deposition of Alexander McKenzie.)

and Mr. Wood said, "I do not understand anything about it." Then Mr. Monckton said to Mr. Wood that you had just told him that he, Mr. Wood, had the keys, and Mr. Monckton said that you had told him that you gave Wood the keys to the boxes, and Mr. Monckton then said, "I now make a demand for those keys," and you then said, "Yes, Mr. Wood, I told the marshal I had given you the keys, that I considered the keys were safer in your possession than in mine." And Mr. Wood said, "I do not know whether I have the keys or not," and said "I will see you later." Is that the substance of what took place there?

A. I do not think there was that much of a conversation, because Wood never lost a step in walking across the room. He just went right through the room. I know there was some feeling between him and Mr. Monckton. Wood answered him kind of short, and Burnham felt it, I know, at the time. I do not remember that there was so much said as what is in there.

Q. Now, Mr. Wood had had some conversation, or been in consultation with you and the marshal prior to that time in the room there?

A. It was in Mr. Geary's room. There was no conversation between us except what I have told you about handing him the keys.

Q. Were there not constant consultations between you and Mr. Geary and Mr. Wood and Judge Noyes that morning, between 10 o'clock and 12 or 1?

(Deposition of Alexander McKenzie.)

A. No, sir; Wood came in, as I told you. Mr. Geary I did talk with. I talked with Judge Geary.

Q. Was not Judge Noyes up there?

A. Judge Noyes came into the room that morning, came into Mr. Geary's room; but there was nothing discussed about this business. Mr. Geary, I think, was in the room.

Q. Nothing was said about this matter at all to Judge Noyes?

A. Not about the keys or the suit, as I remember.

Q. Or about this litigation at all?

A. It was about my arrest all the conversation was.

Q. Was he not asked at that time to issue a writ of habeas corpus?

A. Mr. Geary had got out a writ of habeas corpus, and, as I understood it, brought him up there for that purpose, and he declined to issue it. It was about my arrest. Judge Geary got out a writ of habeas corpus to get me out on a writ, and Judge Noyes came there and he looked at the papers, threw them down, and walked off and would not issue them. That is all that was talked about.

Mr. GEARY.—Q. The question all the way assumes that was in the morning. You say Noyes was there in the morning?

A. When I call it morning, it was after noontime. You know the time.

Q. Noyes was holding court that day. Metson's testimony shows that.

(Deposition of Alexander McKenzie.)

A. Whenever he came. I only saw him once.

Mr. MADISON.—Q. Do you recollect how long you were in the office? A. I was there all day.

Q. Except for luncheon?

A. I did not get out to lunch. I did not get any lunch. I was taken there in the morning, and kept there until after dark.

Q. It was some time during the day that Judge Noyes was there?

A. You see in that country we have no night. About the time of day, I may be mixed on that. It was some time during the day. I was of the impression it was about noon.

Mr GEARY.—Let me ask him a question to save cross-examining him.

Mr. MADISON.—Very well.

Mr. GEARY.—Q. You did not see Noyes yourself that day, did you? He did not speak to you in my room?

A. I did not talk to him about this case.

Q. You say you saw him up there. You saw him going into one of the other rooms?

A. Yes, sir.

Q. He did not talk with you?

A. No, sir; not about this case.

Q. At that meeting, Noyes came to the office. Don't you remember the writ was drawn up and had to be copied, and along in the afternoon you signed it, and Noyes stepped in on his way down to the court in the afternoon?

A. I don't know that.

(Deposition of Alexander McKenzie.)

Mr. MADISON.—Q. Those keys never were returned to you, were they? A. No, sir.

Q. So far as you know, they remained in the possession of Mr. Wood?

A. I think Wood came to me that evening—about the dates, I cannot be quite sure—and said Whitehead had been to him about the case, and he said, "If you have no objection, I will turn them over to him." I said, "I have none whatever," and, as far as I know, he turned them over to Mr. Whitehead, and the balance of my things he gave me, and that is after I was turned over to Vawter that evening or set free. The marshal took a receipt from Vawter for me.

Q. Now, if Judge Noyes stated to Mr. Knight, on the 15th of September—it was Sunday, you think it was, that you saw him? A. I know it was Sunday.

Q. If Judge Noyes stated to Mr. Knight, on the 15th day of September, that he had seen you and talked with you that day, there is a mistake, is there, on somebody's part?

A. It appears there must be, because I never saw Noyes from the time the writ of supersedeas came in, to talk with him, excepting Sunday afternoon.

Q. You went to his room?

A. I never went near him.

Q. You went to his room on Sunday?

A. I went to his room on Sunday, and no other time, from the time the writ of supersedeas came in until Sunday afternoon.

(Deposition of Alexander McKenzie.)

Q. You went to consult with him, to get his advice on what course of proceeding to adopt?

A. I went up there to know if I was doing what was right about turning over the moneys and keep within the law. He was very reticent, and did not give me much satisfaction. He told me about the order; that Judge Morrow's order and the supersedeas did conflict. I went off and saw Mr. Geary.

Q. He did not tell you that the order or the writ was void, did he?

A. He did not. He never said anything of the kind to me.

Q. Or that the order appointing you receiver was not an appealable order?

A. He never discussed that with me at all.

Q. Did he ever say to you that the action of the court down here was beyond the jurisdiction of the court at any time?

A. He never said anything to me about this court that I remember.

Q. Or any of the orders or writs that you received up there; did he ever express an opinion as to their validity?

A. He did not talk about these writs to me. He referred me to Geary this Sunday when I got through. He said, "See your attorney."

Q. Did he ever, at any time, in your hearing, to you or anyone, express an opinion with respect to this Court, or with respect to the validity of any of the writs or orders? A. He did not.

(Deposition of Alexander McKenzie.)

Q. Never in your hearing at any time?

A. No, sir.

Q. Did you not have a consultation with Mr. Archie Wheeler and Judge Noyes, when it was talked about getting the gold-dust out of the jurisdiction of the Circuit Court of Apeals?

A. No, sir, but I was fearful that the bank up there would be robbed, and I talked with Mr. Geary, and I talked with the Judge about having the gold-dust shipped out to some place, which he declined to do.

Mr. GEARY.—Q. You talked with Metson about it, too? A. I talked with Metson about it, too.

Mr. MADISON.—Q. Did you want to ship it to St. Paul?

A. St. Paul or Seattle, or any place to get it out of that country. I was told they were going to rob the bank. I was under $110,000 of bonds, and I was afraid if they broke into the bank and stole the money I would be held as receiver, and at the same time the money was not under my control. I talked with Mr. Geary about it. I talked with Mr. Metson about it. I talked with Whitehead about it. I told Whitehead I was told there was a plot on foot to rob the bank, which I was, and I wanted to see the money shipped out of that camp, because there were a lot of hard men there and I was afraid they would rob the bank. I did talk about that. Noyes declined to do it. He said he would not ship the money out of the jurisdiction of that court, so that matter ended.

(Deposition of Alexander McKenzie.)

Mr. GEARY.—Let me ask a question.

Q. Is it not a fact that on the 20th of August, when the order was made by Judge Noyes, directing you to hire boxes, that Metson and the attorneys for the defendants, themselves, at that time asked the Court to make an order shipping the dust out to some depository outside Alaska? A. That was my understanding.

Q. From that time on, the matter of shipping it out was being talked about between all of us interested in the matter? A. Yes, sir.

Q. And what depository we should select, whether San Francisco, Chicago, or Seattle. There were a number of depositories named. We did not know whether Seattle had a government depository or not at that time.

A. I suggested at one time St. Paul, and Noyes said no.

Q. The Court refused to make such an order for any of us, for the defendants or the receiver, and let the gold-dust stay where it was? A. That is so.

Mr. MADISON.—Q. Do you know when the letter that Marshal Vawter had, which you have already testified to, was written by Judge Noyes?

A. The date of it?

Q. Yes, the time when it was written.

A. I cannot tell you the exact date. It was along about the time that rumpus was on; along about that time. I cannot tell you the date.

Q. It is set up in the answer it was the 15th of September. That would be Saturday.

(Deposition of Alexander McKenzie.)

A. It would be about that time, I think. The dates, I cannot fix.

Q. In your answer it is alleged that before receiving the advice from your attorney, Judge Noyes, had made and issued that order to the United States marshal, and thereafter it was not within your power to comply with the order of this Court—that is, the writs of supersedeas?

A. I could not have done it without overcoming the military. They would not let me.

Q. On account of the instructions which they had received from Judge Noyes?

A. The military were there under the instructions of the marshal, and the marshal was there under the instructions of Judge Noyes, as I understand.

Q. When you first arrived in Nome, did you room with Mr. Wood? A. I did, yes.

Q. You had a room adjoining Judge Noyes', did you not?

A. We went to the Golden Gate Hotel, myself and Wood, yes.

Q. Was it not in your room that the orders appointing you receiver were signed?

A. No, sir, it was not.

Q. Were they not written there?

A. I cannot tell you. If they were, I was not there.

Q. Was it not in your room at the hotel that the judge made the order respecting your appointment as receiver?

(Deposition of Alexander McKenzie.)

A. I don't know a thing about it; I was not there.

Q. As far as your knowledge goes?

A. As far as my knowledge goes, I do not know where they were signed.

Q. You were not present at the time they were signed? A. I was not.

Q. I believe you testified, Mr. McKenzie, that between September 14th, at the time when the writs were served on you, and any time thereafter, you had no conversations, or that there were no conversations with Judge Noyes and yourself, or by Judge Noyes and anybody on your behalf, with respect to what you should do in regard to that gold-dust?

A. I had no conversation with anybody except my attorney here, and I took no one's advice but his. I had not seen Judge Noyes, and had not seen him from the time the supersedeas came in until Sunday afternoon. That I swear positively to.

Q. And after that time?

A. And after that time. I saw him Sunday, and I told you what happened. The next time I saw him was the day he was in Mr. Geary's office.

Q. Was that the time that the marshal arrived—

A. Now, wait.

Q. I was going to give you the date.

A. No, sir, I am wrong about that. They went over to St. Michaels after this—the Court did—the district attorney, the marshal and the Judge. This happened on Sunday that I saw him, and I think Monday they went over to St. Michaels. Was it Monday they went?

(Deposition of Alexander McKenzie.)

Mr. GEARY.—They went that week; I do not know what day.

A. They went to St. Michaels to hold the term of court.

Mr. MADISON.—Q. How long were they gone?

A. They were gone about a week. So there was no opportunity for me to see him, because he was not there.

Mr. GEARY.—I think they went over about Wednesday or Thursday of that week. He did not go Monday. He held court Monday.

The WITNESS.—Noyes was sick in bed.

Mr. GEARY.—They went over Wednesday or Thursday of that week, and came back the following Sunday.

The WITNESS.—It comes to my mind now. I know, while this row was going on, that Noyes left right in the middle of it. There was a good deal of excitement up there.

Mr. MADISON.—Q. After he came back, did you have any conversations with him?

A. About this matter?

Q. About any matter connected with this, or about the gold-dust, and about the writs of supersedeas?

A. No, sir, I never had but one conversation with him about this.

Q. You had other conversations with him about other matters?

A. I had very little to say to him, to tell you the truth, because I felt that he took the money out of my

(Deposition of Alexander McKenzie.)

possession, to be honest with you, when he issued that order taking it out of my possession and putting it into the marshal's, I felt that I did not have much more to do with it, and I had nothing to say to him. I never even discussed that with him.

Q. Did you not see him between September 16th and the conversation which you have referred to, and the subsequent conversation with respect to the habeas corpus?

Mr. GEARY.—He did not testify he had any conversation with him about the habeas corpus.

A. I did not talk to him about the writ; my attorney did.

Mr. MADISON.—Q. Between those dates did you have any conversation with him?

A. I do not think I did.

Mr. GEARY.—That petition for habeas corpus was to admit him to bail. Burnham and Monckton's order did not have any provision for bail, and I thought I would ask the Court to fix bail pending the departure of the steamer to take him out, which he refused to do.

Mr. MADISON.—Q. What conversations, if any, Mr. Geary may have had with him, you were not present at, if there were any such?

A. I never was present at a conversation between him and Geary that I remember of.

Q. Were any such conversations reported to you, or the substance of them?

(Deposition of Alexander McKenzie.)

A. I do not remember Geary having reported anything to me.

Q. Did you ever ask Judge Geary to see Judge Noyes in respect to the gold-dust or its custody, or anything regarding it?

A. I talked with Geary about my duties, of course; but I do not remember of ever having any such conversation with him.

Q. Did you speak to him with respect to the Court making any order such as it did make, as was contained in the letter to Marshal Vawter?

A. I never had any conversation with him about it. I knew nothing of that order until after it was made. I had no idea of it.

Q. You had no intimation it was going to be made?

A. No, sir, I never had any intimation.

Q. The first you knew of it was, you say, when you went to the bank to deposit some dust on Sunday?

A. I think Dr. Whitehead was the first man that told me I could not get in, and then I run it down and went to Vawter and wanted to know why I could not get in as receiver, and he told me. Marshal Vawter was the first man that communicated it to me; that is, that I knew positively, about the letter—Vawter told me. Whitehead told me I could not get in, and I wanted to know why. He said that the marshal had an order not to let me in. Then I went to the marshal, and the marshal told me that Judge Noyes had written him a letter requesting him not to let me or anyone else in there,

(Deposition of Alexander McKenzie.)

and I think that is the first time I ever knew anything about it.

Mr. MADISON.—That is all.

Mr. GEARY.—No questions.

ALEX. McKENZIE.

Subscribed and sworn to before me, at the Alameda County Jail, in Oakland, this 25th day of May, A. D. 1901.

E. H. HEACOCK,

United States Commissioner for the Northern District of California, at San Francisco.

Commissioner's Certificate to Deposition of Alexander McKenzie.

United States of America,
Northern District of California,
City and County of San Francisco. } ss.

I certify that in pursuance of the order of Court aforesaid, made and entered in the above-entitled matter and cause on Thursday, the 23d day of May, 1901, a certified copy of which order is hereunto prefixed, that on the 23d day of May, 1901, at 2 o'clock P. M., I attended at the Alameda county jail, in the county of Alameda, State of California, the place designated in said order as the place for taking the deposition of Alexander McKenzie, and in consequence of the illness of said witness, the taking of said deposition was continued until Friday, May 24, 1901, at the hour of 2 o'clock P. M., and thereafter was again

continued until Saturday, May 25, 1901, at the hour of 10 o'clock A. M.; that upon said Saturday, May 25, 1901, I again attended at the Alameda county jail, for the purpose of taking the deposition of said Alexander McKenzie, and F. D. Madison, Esq., appeared as amicus curiae in support of the order to show cause aforesaid, and Thomas J. Geary, Esq., appeared for the witness Alexander McKenzie; and the said Alexander McKenzie, being by me first duly cautioned and sworn to testify the whole truth, and being carefully examined, deposed and said as appears by his deposition hereto annexed.

And I further certify that said deposition was then and there taken down in shorthand by Clement Bennett, a competent stenographer and disinterested person, under my personal supervision, and was afterwards put into typewriting, and after it had been so put into typewriting it was carefully read over by said witness, and sworn to and subscribed by him in my presence.

I further certify that I have retained the deposition in my possession, until I now seal the same and return it to the clerk of the court aforesaid for which it was taken.

In testimony whereof, I have herento set my hand at my office aforesaid, this 25th day of May, 1901.

E. H. HEACOCK,

United States Commissioner at San Francisco, and Commissioner Designated by the Court Aforesaid for the Purpose of Taking said Deposition.

At a stated term, to wit, the October term, A. D. 1900, of the United States Circuit Court of Appeals for the Ninth Circuit, held at the courtroom, in the city and county of San Francisco, on Monday, the twentieth day of May, in the year of our Lord one thousand nine hundred and one. Present, the Honorable WILLIAM B. GILBERT, Circuit Judge; Honorable WILLIAM W. MORROW, Circuit Judge; Honorable THOMAS P. HAWLEY, District Judge.

In the Matter of
ARTHUR H. NOYES. } No. 701.

Order Referring to Commissioner to Take Testimony.

Upon motion of F. D. Madison, Esq., amicus curiae, it is ordered that the above-entitled matter be, and the same is hereby, referred to the Honorable E. H. Heacock, United States Commissioner, who is hereby expressly authorized to take the testimony of such persons as may be produced before him by respective counsel. Said testimony shall be taken at the Chambers of said Commissioner and the taking of such testimony shall continue until the same shall be sealed and returned to this Court, such return to be made immediately upon the close of the taking of said testimony

I hereby certify that the foregoing is a full, true, and correct copy of an original order made and entered in the within entitled matter.

Attest my hand and the seal of said United States Cir-

cuit Court of Appeals for the Ninth Circuit, at San Francisco, California, this 20th day of May, A. D. 1901.

[Seal] F. D. MONCKTON,
Clerk.

[Ten Cents U. S. Int. Rev. Stamp. Canceled.]

At a stated term, to wit, the October term, A. D. 1900, of the United States Circuit Court of Appeals for the Ninth Circuit, held at the courtroom, in the city and county of San Francisco, on Monday, the twentieth day of May, in the year of our Lord one thousand nine hundred and one. Present, the Honorable WILLIAM B. GILBERT, Circuit Judge; Honorable WILLIAM W. MORROW, Circuit Judge; Honorable THOMAS P. HAWLEY, District Judge.

In the matter of
THOMAS J. GEARY. No. 702.

Order Referring to Commissioner to Take Testimony.

Upon motion of F. D. Madison, Esq., amicus curiae, it is ordered that the above-entitled matter be, and the same is hereby, referred to the Honorable E. H. Heacock, United States Commissioner, who is hereby expressly authorized to take the testimony of such persons as may be produced before him by respective counsel. Said testimony shall be taken at the Chambers of said Commissioner and the taking of such testimony shall continue until the same shall be sealed and returned to this Court, such return to be made immediately upon the close of the taking of said testimony.

I hereby certify that the foregoing is a full, true, and correct copy of an original order made and entered in the within entitled matter.

Attest my hand and the seal of said United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, this 20th day of May, A. D. 1901.

[Seal] F. D. MONCKTON,
Clerk.

[Ten Cents U. S. Int. Rev. Stamp. Canceled.]

At a stated term, to wit, the October term, A D. 1900, of the United States Circuit Court of Appeals for the Ninth Circuit, held at the courtroom, in the city and county of San Francisco, on Monday, the twentieth day of May, in the year of our Lord one thousand nine hundred and one. Present, the Honorable WILLIAM B. GILBERT, Circuit Judge; Honorable WILLIAM W. MORROW, Circuit Judge; Honorable THOMAS P. HAWLEY, District Julge.

In the Matter of
JOSEPH K. WOOD. } No. 703.

Order Referring to Commissioner to Take Testimony.

Upon motion of F. D. Madison, Esquire, amicus curiae, it is ordered that the above-entitled matter be, and the same is hereby, referred to the Honorable E. H. Heacock, United States Commissioner, who is hereby expressly authorized to take the testimony of such persons as may be produced before him by respective counsel. Said testi-

mony shall be taken at the Chambers of said Commissioner, and the taking of such testimony shall continue until the same shall be sealed and returned to this Court, such return to be made immediately upon the close of the taking of said testimony.

I hereby certify that the foregoing is a full, true, and correct copy of an original order made and entered in the within entitled matter.

Attest my hand and the seal of said United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, this 20th day of May, A. D. 1901.

[Seal] F. D. MONCKTON,
Clerk.

[Ten Cents U. S. Int. Rev. Stamp. Canceled.]

In the United States Circuit Court of Appeals, for the Ninth Circuit.

In the Matter of ARTHUR H. NOYES. } No. 701.

In the Matter of THOMAS J. GEARY. } No. 702.

In the Matter of JOSEPH K. WOOD. } No. 703.

Deposition of Archie K. Wheeler.

Wednesday, May 29, 1901.

Before Hon. E. H. HEACOCK, United States Commissioner.

(Deposition of Archie K. Wheeler.)

Appearances:

F. D. MADISON, Esq., as Amicus Curiae in Support of the Order to Show Cause.

THOMAS J. GEARY, Esq., Appeared for Himself.

Archie K. Wheeler, having been duly sworn, testified as follows:

Mr. MADISON.—Q. Please state your name.

A. Archie K. Wheeler.

Q. Where is your residence?

A. My residence is Minneapolis, Minnesota.

Q. Have you been living in Minneapolis during all of last year, and are you living there at present?

A. I have made my home there, yes. That is my family residence.

Q. What is your occupation?

A. I am an attorney by occupation.

Q. Have you been acting as attorney during this year?

A. I have not practiced any law this year. What I mean is, I have not been in court.

Q. Have you an office?

A. No, sir, I have no office.

Q. How about last year?

A. I had no office. I have not been in any office since last June—the 25th, I think.

Q. The 25th of June, 1900?

A. Yes, sir. I wish to state that it was on that date that I left the employment I was in in Minneapolis—the office I was in—with Judge Noyes for Alaska. That is what I mean by saying I have not practiced any.

(Deposition of Archie K. Wheeler.)

Q. Did you go to Nome from there? A. Yes, sir.

Q. Did you practice law at Nome?

A. I did in a limited way, which, if you will allow me to explain, I shall.

Q. Yes, proceed with your explanation.

A. When I left Minneapolis with Judge Noyes, I went to act as his clerk. He told me that he could not say what salary or compensation he would be able to pay me until after he had conferred with the Department of Justice at Washington. I left with him on the proposition that if, after he had conferred with the Department at Washington, and the salary was fixed by the attorney general, if it was not suitable to me, I was going to practice my profession in Nome. If it was suitable, I was to accept and continue in his employment as his clerk.

Q. When you speak of "clerk," you mean his private clerk; not the clerk of the court?

A. Not the clerk of the court.

Q. His private clerk?

A. Yes, sir. Upon my arrival in Nome at that time, and until along in the latter part of September, my compensation had never been fixed by the attorney general. Certain parties came to me with cases, and I accepted them, filed the papers, where they were necessary, in the clerk's office, and immediately after my compensation was fixed by the attorney general and notice was received by Judge Noyes—

Q. (Interrupting.) When was that?

A. I would not be sure about the date, but I think the latter part of September. (Continuing:) I then was in-

(Deposition of Archie K. Wheeler.)

formed by Judge Noyes that I could not practice any more law if I accepted the position, and at the salary fixed by the attorney general, which I did. After that I practiced no law.

Q. Prior to that time, you had been acting as clerk of the court, had you? A. Not clerk of the court.

Q. Clerk of the Judge, I should say.

A. Doing such work as the Judge asked me to do, in the shape of writing instruments, and such work as that; clerical work in his office; looking up authorities.

Q. Your office was his office? A. Yes, sir.

Q. At the same time you were acting as attorney for anyone who employed you?

A. I was acting in so far as I filed the papers in the clerk's office. I never appeared before Judge Noyes but twice in court.

Q. You were employed to act as attorney—

Mr. GEARY.—(Interrupting.) Let him finish his answer.

A. I should like to explain, Mr. Madison, if you please.

Mr. MADISON.—Very well.

A. I never appeared in court before Judge Noyes but twice; I think that is all. Once I appeared as an accommodation for another attorney who was absent, and who asked me to appear just in a merely formal matter which came up before the Court. Another time I appeared for one of the receivers.

Q. Cameron?

A. Cameron, of the Topkok mine. And I would say,

(Deposition of Archie K. Wheeler.)

in that connection, that I never received a cent of compensation from any of them in any way, shape or manner, for anything I did for them. I drew papers for them and office work. I did considerable for them.

Q. The fact that you did not receive compensation was your misfortune, not by contract?

A. I had no contract whatever with them. They came to me as an officer of the court, presumably, and considered that they had the right to ask me.

Q. You did not agree to work as their attorney for nothing?

A. No, sir, I did not agree to act as their attorney for anything.

Q. You did act as their attorney?

A. I did, but I never asked for compensation.

Q. You expected to receive compensation?

A. No, sir, I never expected to get a cent of compensation. My second appearance was in connection with the Topkok receiver. Those were my only two appearances that I made in court at all.

Q. Did you not appear as attorney for Mr. Hansen, and accept employment from him?

A. I did not appear as attorney for Mr. Hansen.

Q. I do not care whether you appeared in court. Did you not act as his attorney? Did you not give him legal advice? A. Yes, sir, I gave him legal advice.

Q. That you did with a number of others, too, did you not? A. Yes, sir, I did.

Q. When you speak about appearing in court, it was simply that your cases did not come to trial?

(Deposition of Archie K. Wheeler.)

A. That I never did anything in court, except what the clients themselves might have done without an attorney.

Q. You advised clients?

A. I advised clients, yes, as to legal propositions, when they asked me.

Q. You did that all the time you were at Nome?

A. Yes, sir—no, I did not all the time; not after Judge Noyes told me that I could not practice law and hold my position, after my salary had been fixed.

Q. That was after the writs of supersedeas had been received at Nome?

A. No, sir, that was before that.

Q. The writs of supersedeas reached Nome September 14, 1900.

A. I think it was before those writs came that this occurred. I would not be certain, but I think it was.

Q. Are you a stenographer? A. Yes, sir.

Q. Can you write shorthand?

A. In a way, yes.

Q. What do you mean by "in a way"?

A. I am not an expert.

Q. Did you ever use it in your business?

A. Yes, sir, I have used it.

Q. Did you use it while you were acting as clerk for Judge Noyes? A. Yes, sir.

Q. Shorthand? A. Yes, sir.

Q. Do you know Alexander McKenzie?

A. Yes, sir.

(Deposition of Archie K. Wheeler.)

Q. Did you act for him in any capacity?

A. No, sir.

Q. Did you ever help him out in a friendly way?

A. Nothing, only I did typewriting for him of his accounts.

Q. What accounts were those?

A. The accounts in those cases which were in litigation, just before McKenzie came out from there. I did the typewriting of his accounts—made out all his accounts; that is, they were made out, handed to me, and I run them off on the typewriter. That is the only work I ever did for Mr. McKenzie.

Q. Did you advise Mr. McKenzie? A. No, sir.

Q. Ever gave him any legal advice?

A. No, sir, never.

Q. You did prepare his accounts in the Anvil Creek cases?

A. I did not prepare them. I wrote them off, after they were prepared on the typewriter.

Q. You prepared them for the Court?

A. I don't know who they were prepared for. I wrote them off with the typewriter after they were prepared. His clerk handed them to me.

Q. That you think was some time in October, 1900?

A. Yes, sir, that was in October.

Q. How long before he came out, do you remember?

A. It was while he was under arrest.

Q. That would be about October 15th.

A. Somewheres along there.

(Deposition of Archie K. Wheeler.)

Q. Do you remember or recall the arrival at Nome of the writs of supersedeas issued by the Circuit Court of Appeals in the Anvil Creek cases, which arrived there September 14, 1900?

A. I remember of the service of the writs or orders on Judge Noyes.

Q. That was, I believe, as a matter of fact, September 14, 1900? A. I think it was.

Q. Were you there at the time Judge Noyes was served?

A. No, sir; he sent for me immediately after he was served.

Q. Did he show them to you?

A. Yes, sir. He was sick in his room at the time.

Q. Sick in the room at the hotel at that time?

A. Yes, sir.

Q. What did he say with respect to them?

A. He handed the writs to me, and he said, "I think the practice is that I will have to make an order staying proceedings in those cases. If you will get some paper, I will try and dictate to you the order." I got the paper, and he did so dictate the order staying the proceedings in the cases at that time.

Q. What became of that order?

A. I took the notes as I had taken them over to the office, wrote it out on the typewriter—this was on Saturday—and after I had written it out, I brought it back to him, and it did not suit him.

Q. Why did it not suit him? What did he say?

(Deposition of Archie K. Wheeler.)

A. He said, after reading it over, that he thought it ought to be worded in the words of the order itself; that it should contain—

Mr. GEARY.—Q. (Interrupting.) What order itself?

A. The order served upon him, or the writs of this court, of the Circuit Court of Appeals. He said that it should contain or recite the words of the order, and that necessitated a change in the order. I took the writs back, or the order, at least, that he was making for the stay of proceedings—I took them back to the office, and Sunday the deputy clerk and I made the orders to conform to the wording of the order from the Circuit Court of Appeals, and Monday morning Judge Noyes, with some few changes again which were made in them, signed the orders and they were filed in the clerk's office.

Mr. MADISON.—Q. You say he sent for you on Saturday? A. I think it was Saturday.

Q. And dictated to you the form of the orders?

A. And dictated to me the form of the orders staying proceedings.

Q. And you took them to your office and wrote off such orders as he had dictated? A. Yes, sir.

Q. And you then took the orders to him on that same day, and they did not suit him, and he inserted or directed you to rewrite the orders containing the language of the writs which had been issued by the Circuit Court of Appeals? A. Yes, sir, that is right.

Q. Which you did on the same day, and handed them to him? A. No, sir, that was on Sunday.

(Deposition of Archie K. Wheeler.)

Q. On Sunday you did that? A. Yes, sir.

Q. And he signed them on Monday?

A. And he signed them on Monday. Monday was the first time he had been over to the office. He came to his chambers on Monday.

Q. Did he say anything to you, or did you hear him say to anyone, that the writ of supersedeas, or any of the writs of supersedeas, were void?

A. No, sir, he did not discuss them with me at all in any way, shape or manner.

Q. Did you hear him say that, I say?

A. No, sir.

Q. Not to anyone? A. Not to anyone.

Q. To anyone in your presence at any time?

A. No, sir.

Q. Did you hear him say that the order of Judge Morrow was void? A. No, sir, I did not.

Q. Did you hear him say, or did he say to you at any time, that any action of this court, any writs or processes of this court were beyond his jurisdiction or were void?

A. No, sir, he did not.

Q. Did you ever hear him discuss any action of Judge Morrow, or of this Circuit Court of Appeals, with anyone?

A. I never did; not in my presence or to me.

Q. You never heard him say one word about this court, did you? A. No, sir, I never did.

Q. You are sure about that?

A. Yes, sir, absolutely sure.

(Deposition of Archie K. Wheeler.)

Q. If it had taken place, you would have known it?

A. If it had taken place with me, I should certainly have known it.

Q. Or in your presence?

A. Or in my presence.

Q. You will swear nothing of that kind took place?

A. I will swear nothing of that kind took place. I will swear positively I never heard Judge Noyes discuss the orders of the court in any way, shape, or manner.

Q. Were you present on September 17, 1900, at a meeting at Nome, at which Judge Noyes and Mr. Geary and Mr. Hubbard were also present, wherein there was a general discussion respecting these orders, or the writs, or the action of the court, and after a long argument, the Judge finally said he would stay proceedings, and he would have the marshal up there arrest further proceedings in respect to the action of the court down here, and enforce his orders, or words to that effect?

A. No, sir. I was not. I will answer in this way: I was not present on that date, or any other date, at such a meeting, where a conversation of that nature took place.

Q. Were you present on September 16th, at a meeting between Judge Noyes and Mr. Geary—I do not know whether any others were present or not, but those two were present, and Judge Noyes then said that he considered that the writs of supersedeas were void?

A. No, sir, I never heard Judge Noyes say any such thing at any meeting.

Q. Or that the order appointing the receiver was an appealable order? A. No, sir.

(Deposition of Archie K. Wheeler.)

Q. You never heard Judge Noyes say, in his opinion—

A. (Interrupting.) I never heard him discuss it at all.

Q. (Continuing)—that the order appointing a receiver in those cases was appealable?

A. I never heard him discuss it, except when he gave it from the bench, when they asked for an appeal. I was present in court at that time. I think Judge Jackson asked for an appeal, and he said the order was not appealable. That was the only time I ever heard him express himself.

Q. Did this conversation take place between you and Judge Noyes on October 15th, or thereabouts, at Nome: That Judge Noyes said to you, "By God! I do hope McKinley is elected. I will fix those fellows"?

A. No, sir.

Q. Did you ever hear Judge Noyes say that Judge Morrow had been fooled, or was a fool, and had been imposed upon by parties in San Francisco?

A. No, sir, I never did.

Q. Or any words to that effect? A. No, sir.

Q. Do you know anything about an order or letter which was written by Judge Noyes on or about September 15, 1900, addressed to Marshal Vawter, with respect to the gold-dust in the safe deposit boxes of the Alaska Banking and Safe Deposit Company?

A. I remember such a letter being written, yes.

Q. Did you write it? A. Yes, sir.

Q. At whose request did you write it?

(Deposition of Archie K. Wheeler.)

A. Judge Noyes'.

Q. Did he dictate it to you? A. Yes, sir.

Q. Did he sign it? A. Yes, sir.

Q. Did you deliver it Marshal Vawter?

A. Yes, sir.

Q. What was the contents of the letter?

A. I cannot say positively what the contents of it was.

Q. As near as you can recollect.

A. To the best of my recollection at the present time—

Mr. GEARY.—Q. (Interrupting.) Where are your notes? Where is the copy?

A. That is at Nome, I suppose. I cannot testify about the contents of the letter.

Mr. MADISON.—Q. What is your best recollection upon the subject?

Mr. GEARY.—I object to his best recollection. If he has his notes, the notes ought to be produced. This matter does not come up until October, and he will have ample time to produce his notes. (Addressing the witness.) If you have not any positive recollection, you need not give it.

Mr. MADISON.—I submit the witness should answer the question, if your Honor please.

The COMMISSIONER.—I have no authority to rule upon the matter. The practice is that the objection goes of record, and the witness answers the question.

(Deposition of Archie K. Wheeler.)

Mr. GEARY.—He is their witness, and not our witness. The matter has been reduced to writing. He says he has his notes, and they are in a book. He ought to bring the book.

Mr. MADISON.—Q. State the best of your recollection upon the subject.

Mr. GEARY.—If you have a clear, positive recollection. If you have not, do not testify until you consult your notes, Mr. Wheeler.

Mr. MADISON.—I object to Mr. Geary telling the witness how he shall testify.

Mr. GEARY.—I have the same right to do it as I did in the other proceedings.

Mr. MADISON.—I submit the witness has a right to answer the question.

Mr. GEARY.—If he can give his full recollection, yes.

Mr. MADISON.—I have asked him for his best recollection.

Mr. GEARY.—The paper being the best evidence, and no testimony being given as to why the paper is not here, the question is improper, and I advise the witness he need not answer unless he wants to.

The WITNESS.—The only way I can answer the question is to give to the best of my recollection the substance of the letter.

Mr. MADISON.—Q. That is what I asked for.

A. The substance of the letter was a command to

(Deposition of Archie K. Wheeler.)

the marshal to preserve peace and order, and protect life and property in the town.

Q. That was all?

A. That was all; to the best of my recollection, that is what the letter contained.

Q. That is your best recollection upon the subject?

A. That is my best recollection upon the subject at the present time.

Q. You do not remember that it had anything to do with these cases? A. I do not.

Q. You have heard of these cases before, have you not, Mr. Wheeler?

A. Yes, sir. It was a general order, as I remember it now, to protect life and property, and preserve peace and order within the limits of the town.

Q. You have heard that Mr. McKenzie was receiver at Nome, I presume? A. Yes, sir.

Q. And that he was operating certain placer claims up there? A. Yes, sir.

Q. And had been appointed as such receiver by Judge Noyes? A. Yes, sir.

Q. And that he deposited gold-dust in the safe deposit boxes in the Alaska Banking and Safe Deposit Company? A. Yes, sir.

Q. And that certain appeals were taken in San Francisco from the orders appointing him receiver, and writs of supersedeas were issued by this court and arrived at Nome? A. Yes, sir.

Q. You have heard about those proceedings?

A. Yes, sir, I have.

(Deposition of Archie K. Wheeler.)

Q. This order that you speak about, that was written by Judge Noyes, at least dictated by Judge Noyes and written by you, was it written by you on a typewriter or in longhand? A. On the typewriter.

Q. A typewritten letter? A. Yes, sir.

Q. You are sure about that?

A. Yes, sir, I am, because I kept a copy of it.

Q. When was that written?

A. That was written, I think, either on Friday or Saturday afternoon, I would not be sure.

Q. That would be September 14th or 15th?

A. Yes, sir, I think it was written on one of those days.

Q. How long after it was written did you hand it to Marshal Vawter?

A. I immediately took it down and handed it to Marshal Vawter.

Q. Where was the Marshal at that time?

A. He was in his office.

Q. It had nothing whatever to do with—

A. (Interrupting.) Excuse me, I would not be positive whether the marshal was in his office or not, or whether I went from there over to the barracks. I know I went directly from his office to the barracks. I am not sure at which one of the two places I handed him the letter. I went immediately after writing it to his office.

Q. What was the marshal up there for at Nome, do you know?

(Deposition of Archie K. Wheeler.)

A. I presume he was there to fulfill the duties as United States marshal of that territory.

Q. Was not one of those duties the preserving of the peace and keeping of order?

A. Yes, sir, I presume so.

Q. Was it necessary for Judge Noyes to write him a letter to that effect?

A. I don't know anything about that.

Q. What is your opinion upon that subject?

A. How do you mean my "opinion"?

Q. You say all you recollect about this order is that Judge Noyes told the marshal to keep the peace in Nome?

A. I understood at the time there was very nearly a riot there.

Q. You thought it was necessary for Judge Noyes to write him a letter to that effect?

Mr. GEARY.—(Addressing the witness.) You need not answer that argument.

Mr. MADISON.—Will your Honor instruct the witness to answer?

The COMMISSIONER.—No. The practice is, if the witness refuses to answer, and counsel desires him to answer the question, to certify the matter to the Court.

Mr. MADISON.—I do not know whether the witness refuses to answer or not.

The WITNESS.—Just read the question, Mr. Reporter, please.

(Deposition of Archie K. Wheeler.)

(The reporter reads the previous question as follows: "You thought it was necessary for Judge Noyes to write him a letter to that effect"?)

The WITNESS.—I think I will decline to answer that, unless the Court insists.

The COMMISSIONER.—Q. You do refuse to answer? A. Yes, sir, I decline to answer.

Mr. MADISON.—Q. You have testified that you remember that Judge Noyes did, on or about September 15, 1900, address a letter or order to the marshal at Nome, with respect to the gold-dust taken by the receiver from the claims of which he had been appointed receiver and which he had worked, have you not?

A. I wish to state that this letter which was written by Judge Noyes, to the best of my recollection, did not contain anything in regard to any specific gold-dust, or any gold-dust. As I said before, I am not positive of the language of that letter. I did not fix it in my memory at the time I wrote it.

Q. Was not this the contents—maybe I can refresh your recollection—

Mr. GEARY.—(Interrupting.) If you have a copy of the letter, that is the best way to refresh his recollection.

Mr. MADISON.—Q. Have you a copy of that letter?

A. I have not here. There is a copy in Nome, in Judge Noyes' files.

Q. You say Judge Noyes did file the letter?

(Deposition of Archie K. Wheeler.)

A. I filed it away in his desk, as I did all the copies of letters.

Q. Not among the papers, though?

A. Not among the papers in the case, no. It was a personal letter. It was not in the form of a court order.

Mr. GEARY.—Have you a copy of it, Mr. Madison? If you have a copy of it, produce it.

Mr. MADISON.—Q. Did you take down—

Mr GEARY.—If you have a copy of it, Mr. Madison, I ask you to produce that copy and show it to the witness before you continue your examination any further. You can say you have or have not.

Mr. MADISON.—I have no copy.

The WITNESS.—The letter was in the nature of a personal letter; not a Court order; written upon Judge Noyes' private letter-head.

Mr. MADISON.—Q. Did it not direct the marshal not to allow Alexander McKenzie to have access to the boxes of the Alaska Banking and Safe Deposit Company, or any one else to go near those boxes?

A. I don't remember of Aleck McKenzie's name being mentioned in the letter at all.

Q. Did you see another letter written by Judge Noyes in longhand? A. Written by himself?

Q. Written by himself, directed to Marshal Vawter?

A. No, sir, I did not.

Q. Do you now of any other letter being written in longhand?

(Deposition of Archie K. Wheeler.)

A. Not that I know of. There might have been, but I don't know anything about it.

Q. Then, so far as you recollect, there was nothing in the letter which you have testified to which authorized the marshal to prevent Alexander McKenzie from going to his boxes in the safe deposit vault?

A. To the best of my recollection, there was not.

Q. You did not see the letter, if there was such a letter? A. I saw no other letter.

Q. Did you have any conversation with McKenzie between September 14th and October 15th, 1900?

A. I guess I did. I must have talked to him between that time.

Q. With respect to matters in these different suits?

A. The only talk I had with McKenzie was in regard to typewriting his accounts for him. He asked me if I would do that for him; if his clerk got them ready, if I would typewrite them. I told him I would, which I did.

Q. That was the only conversation you had with McKenzie?

A. That was the only conversation I had with McKenzie that I know of, except it might have been in a general way, just to meet him for a minute. I do not think between those dates I was with the man five minutes at any one time.

Q. Now, will you send us the copy of this letter—send it to the Commissioner?

A. I don't know whether I am at liberty to do that or not.

(Deposition of Archie K. Wheeler.)

Mr. GEARY.—He has not got the copy.

A. I have not got the copy. It is not my property.

Mr. GEARY.—It is filed with Judge Noyes' papers, he says.

The WITNESS.—It is in Judge Noyes' possession. It is in his possession, not mine.

Mr. GEARY.—I will promise you there shall be a copy produced before the 14th of October, unless the town of Nome is burned up and all the papers are destroyed.

Mr. MADISON.—Will you promise that for Judge Noyes?

Mr. GEARY.—No, for myself.

The WITNESS.—I could not promise. It is not my property.

Mr. GEARY.—All the papers in the case will be here before the 14th of October, in this court.

Mr. MADISON.—How can you promise it if you have no control over it?

Mr. GEARY.—I make the promise, and usually keep my promises. Of course, there is a possibility that everything may have been burned up there. The town may have burned down. We have not heard from there for three months.

Mr. MADISON.—Q. In respect to that order that you speak of, made on September 17th—

A. I think that was the date.

(Deposition of Archie K. Wheeler.)

Q. That was Monday, was it not? A. Yes, sir.

Q. Monday was the 17th of September, 1900?

A. I think it was the 17th.

Q. That was the day it was filed? A. Yes, sir.

Q. Do you remember the hour of the day it was filed?

A. I think it was filed in the afternoon some time, along about 3 or 4 o'clock.

Q. As to these writs, you say Judge Noyes sent for you on Friday. That would be the 15th. As a matter of fact, Judge Noyes was served on the 14th?

Mr. GEARY.—He said he was not sure whether it was the 14th or 15th.

A. I am not sure about the dates or days. I am not absolutely positive upon those things. I have no way of being positive.

Mr. MADISON.—Q. It was Friday that the Judge was served with the order? A. Yes, sir.

Mr. GEARY.—He says he is not certain whether it was Friday or Saturday that Judge Noyes sent for him. On Sunday he took the corrected order to the clerk's office.

Mr. MADISON.—Q. If it was served on Friday, it was Friday that he sent for you?

A. I presume it was.

Q. Don't you recall it was immediately after he was served?

A. I think it was a very short time after he was served with the papers that I went to his room.

(Deposition of Archie K. Wheeler.)

Q. It was three days after that before you wrote up this order staying proceedings, or rather, before it was filed? It was not filed until Monday?

A. It was not filed until Monday.

Q. If Marshal Vawter has testified under oath that he was directed by Judge Noyes not to allow McKenzie to have access to the vaults, to the gold-dust, taken by McKenzie from the placer claims, that is something you know nothing about?

A. I don't know anything about what Mr. Vawter has testified to or sworn to.

Q. I say, that fact you do not know anything about?

A. I do not know anything about it.

Q. You do not know that Mahshal Vawter was directed or ordered by the Court not to let McKenzie have access to that? A. No, sir, I do not.

Q. That is something entirely absent from your memory?

A. At the present time, I do not remember any such order that I was connected with in any way.

Q. Or direction? A. Or direction.

Q. Either friendly or judicial? A. No, sir.

Q. Or verbal or written?

A. No, sir. The only direction I know of is this letter which I have been testifying about.

Q. Directing him to keep the peace at Nome?

A. That is my recollection of the contents of the letter.

Q. Then, so far as you know, there was no action taken

(Deposition of Archie K. Wheeler.)

by Judge Noyes which prevented Alexander McKenzie from complying with the writs of supersedeas issued by this Court?

A. Not that I know of. I don't know anything about the cases in court. I mean after the writs came in there.

Q. You saw the writs, though?

A. Yes, sir, I saw the writs.

Q. There was no action taken by Judge Noyes which prevented Alexander McKenzie from complying with that writ? A. Not that I know of.

Q. Or any of those writs?

A. Not that I know of.

Q. You would have known it, if it had come through you?

A. Not unless it came through me—I would not have known it.

Q. You had charge of the Judge's papers, did you not, in his office? A. His private papers?

Q. No, the papers connected with the litigation.

A. They were kept in the clerk's office and filed.

Q. The matters under submissions and orders that he had in his desk, you had charge of those?

A. Yes, sir, I kept them together.

Q. Were you present at an interview between Judge Noyes and Alexander McKenzie on September 16th?

A. No, sir.

Q. Or any interview between Alexander McKenzie and Judge Noyes? A. No, sir.

(Deposition of Archie K. Wheeler.)

Q. Any interview between Judge Noyes and Mr. Geary? A. No, sir.

Q. At any time?

A. I have been present when Mr. Geary and Judge Noyes have been talking together.

Q. When was that?

A. All the summer. Several times I have been present.

Q. After September 14, 1900, I mean.

A. I presume there were times after that; there is no specific time that I can remember of at the present time.

Q. Any time when any conversation was had, or anything said by either of them with respect to this litigation?

A. I was never present when this litigation was discussed between Judge Noyes and Judge Geary, if it ever was discussed.

Q. You never heard either of them say anything about it? A. No, sir, I did not.

Q. Do you know anything about the order made by the Court in the case of Chipps vs. Lindeberg, on the 6th day of October, 1900? A. I do not remember it.

Q. Did you have any knowledge of the order that was made there? A. Not that I remember of now.

Q. Do you know whether or not on that date this order was made in that case: "Upon hearing the motion of the plaintiff for an injunction, and the affidavit thereto attached, and the complaint in the above-entitled

(Deposition of Archie K. Wheeler.)

cause, it is ordered that the defendants herein show cause before me at my chambers, in the Court Building, Steadman avenue, Nome, Alaska, on Monday, the 8th day of October A. D. 1900, at the hour of 9:30 o'clock A. M., why an injunction should not issue restraining you from the further working of the Discovery placer mining claim, Cape Nome Mining District, District of Alaska, and restraining you from deporting from the jurisdiction of this Court any gold-dust or gold taken out of the said Discovery placer mining claim on Anvil Creek, Cape Nome Mining District, District of Alaska," an order made in chambers on the 6th day of October, 1900? A. I do not remember.

Q. It was not dictated to you? A. No, sir.

Q. If it had been dictated to you, you would remember it?

A. The order would not be dictated to me, anyway. The attorneys all drew their own orders. It would not be prepared by me. It would be presented to him merely for signature.

Q. Do you remember on October 3, 1900, or thereabouts, that there was an argument between yourself and Judge Noyes, and some others, with respect to the sending of the money, or the gold-dust or gold, then in the safe deposit vaults of which we have been talking, away from Nome?

Mr. GEARY.—Mr. Wheeler, you have a right to ask him now what others. You have a right to ask all the persons present, so as to fix the time and place. He says

(Deposition of Archie K. Wheeler.)

"Judge Noyes and some others." You have a right to have him tell you all the others present, and to fix the time, place, room, and hour.

A. To my best memory at the present time, I never participated in such an argument with Judge Noyes or any one else.

Mr. GEARY.—If he knows who else was present, he should tell you so. He should tell you the room, the place, what part of the town it was in, and the hour, so as not to be led into a trap. You have a right to ask him who else was present if you want to do it, for your own protection. I give you that as amicus curiae.

The WITNESS.—I will ask you who was present besides Judge Noyes and myself

Mr. MADISON.—Q. At any time when any one was present.

Mr. GEARY.—(Addressing the witness.) You need not answer that, unless he tells you the time and place and persons present. You can decline to answer unless he does that.

A. I shall decline to answer the question.

Mr. GEARY.—Ask him for full information.

Mr. MADISON.—Q. Did you ever hear Judge Noyes say, at that time, on or about October 3, 1900, in your presence, to you, or anyone else, that it would be advisable to send the gold or gold-dust held by McKenzie, as receiver, away from Nome?

A. No, sir, I never did.

(Deposition of Archie K. Wheeler.)

Q. You did not suggest, upon that occasion or any other, that it would be advisable to send it to St. Paul or Chicago? A. No, sir.

Mr. GEARY.—I would not answer the question unless he tells you who the other is. They might have some stalking witness who might come in and say he was present. I should be a little slow, if I were you, in answering, unless he informs you of these things.

Mr. MADISON.—Q. Do you remember about that time Judge Noyes had a talk with General Randall with respect to Judge Morrow, and said he believed Judge Morrow had been imposed upon or he would not have made these orders, if he had known of the circumstances? A. Was I supposed to be present at that?

Q. Yes, you were present, I understand.

A. No, sir.

Mr. GEARY.—Do you contend I was present, Mr. Madison, at any of those meetings with General Randall or any other people? Have any of your informants so advised you?

Mr. MADISON.—I am not under examination.

Mr. GEARY.—I will have you on before we get through with the case.

Mr. MADISON.—I am ready whenever you do.

Mr. GEARY.—I ask you now, for the purpose of examining this witness. I do not care to bother my head about anything that is not necessary.

(Deposition of Archie K. Wheeler.)

Mr. MADISON.—I will say I am not taking this testimony to be used as against you.

Mr. GEARY.—I ask now if there is any claim made that I was present at a conversation between General Randall or anybody else at any of the times referred to in the examination of Mr. Wheeler, where the matter of removing gold-dust was discussed. I ask the attorney now to advise me if he claims I was present at any such conversation.

Mr. MADISON.—I wil say, in reply to that, that I do not intend to use any part of the testimony in the matter of the contempt proceedings against Thomas J. Geary.

Cross-Examination.

Mr. GEARY.—Q. You said that Noyes told you you could not practice. Was that on your second appearance in his court?

A. Immediately after my second appearance.

Q. That is the time that you appeared for Cameron?

A. Yes, sir.

Q. You never before that had appeared in Judge Noyes' court as an attorney, except on the occasion when you appeared to represent some other attorney by request?

A. Just as an accommodation, and by request of some other attorney.

Q. On your next appearance, Noyes advised you you could not practice in his court? A. Yes, sir.

Q. Did you practice after that in his court?

(Deposition of Archie K. Wheeler.)

A. No, sir; the cases in which I appeared as attorney were transferred, and another attorney substituted on the record.

Q. That happened as soon as your compensation was fixed and you became the regular clerk of Judge Noyes?

A. Yes, sir, right after that time.

Q. You started to say something about why the Vawter letter was written, that there was a riot, when Mr. Madison cut you off with another question. Why was the Vawter letter written?

A. The conditions at that time were very peculiar at Nome. McKenzie was in possession of the gold-dust—that is, had it deposited in the bank, in the boxes, as I understood it, under order of the Court, and the defendants wanted him to turn it over after the service of those writs and papers upon him. It appears that McKenzie did not turn it over and the defendants had threatened to break open the vaults and take the gold-dust. This news was communicated to Judge Noyes.

Q. By whom?

A. I cannot say at present, because he was in his room at the time sick when this news was brought to him. He sent for me, and dictated this letter to Marshal Vawter, and the one to Major Van Arsdale; both of the same tenor, as I remember now.

Q. And because at that time, from the information he had received, he apprehended there was going to be a riot at the bank? A. Yes, sir.

Q. So he sent these letters to Marshal Vawter and to

(Deposition of Archie K. Wheeler.)

the Commander of the United States troops, asking them to preserve peace? A. Yes, sir.

Q. What was the result of his writing those letters?

A. The result was, as I understood it, that the military authorities put a guard in control of the bank.

Q. Immediately after the receipt of the letter which you took to Van Arsdale? A. Yes, sir.

Q. You are not certain whether that was Friday or Saturday? A. I am not.

Q. That is the only letter that you know of?

A. That is the only letter that I know of.

Q. Whether he afterwards wrote an additional letter to Van Arsdale directing him to take charge of the dust, you do not now know?

A. No, sir, I do not.

Q. He might have written that without your knowledge? A. Yes, sir.

Q. You are not prepared to contradict the testimony of Marshal Vawter that he received such a letter?

A. I am not.

Q. Or the testimony of Dr. Whitehead that he read such a letter? A. I am not.

Q. And was governed by it?

A. No, sir, I am not.

Q. Monday was the first day of court up there, Monday, August, the 17th. There was not any court on Friday or Saturday? A. No, sir.

Q. Friday, Saturday and Sunday, Judge Noyes was sick in his room at the hotel? A. Yes, sir.

(Deposition of Archie K. Wheeler.)

Q. The first time he appeared in court was Monday, the 17th? A. Yes, sir.

Q. This order, you think, was made some time in the afternoon of that day?

A. Yes, sir, I think it was made that day, in the afternoon, and filed.

Q. Mr. Madison asked you where your home was. You say Minneapolis?

A. Minneapolis, Minnesota.

Q. And you left there with Judge Noyes to go to Nome? A. Yes, sir.

Q. Do you know the date you left?

A. I left there on the 25th day of June.

Q. 1900? A. Yes, sir.

Q. Judge Noyes accompanied you? A. Yes, sir.

Q. Who else was in the party?

A. Judge Noyes, his wife, and myself, and Charlie Dickey and his wife.

Q. What road did you travel over to Seattle?

A. The Great Northern.

Q. You traveled over the Great Northern to Seattle? A. Yes, sir.

Q. Did Alexander McKenzie accompany you?

A. No, sir, he did not.

Q. When did you first meet McKenzie?

A. About the 2d or 3d of July.

Q. About the 2d or 3d of July?

A. Somewhere along the first part of July.

Q. Where did you first meet him?

(Deposition of Archie K. Wheeler.)

A. In the office of the Butler Hotel.

Q. Seattle? A. Yes, sir.

Q. Had you ever met Alexander McKenzie before that in your life? A. I never had.

Q. What was your intention when you and Judge Noyes and his wife left Minneapolis for Seattle, as to your movements after you reached Seattle, if you know?

A. Judge Noyes had been informed that the revenue cutter "McCullough" was to be at Seattle to take him and his party to Nome, and Judge Wickersham and his party to Sitka.

Q. What do you mean by "Judge Noyes and his party, and Judge Wickersham and his party"?

A. I mean the clerks of the court. Judge Noyes told me in Minneapolis they were going to Sitka, and there meet Judge Brown, and the three Judges would hold a meeting and divide the territory; but after we arrived at Seattle, he could not get any trace of where the "McCullough" was.

Q. What inquiries did you make about the "McCullough"?

A. I did not make any myself, but I asked Judge Noyes several times, and he had made inquiries, and he said he was unable to find out anything about where she was and when she would return. We waited there twelve days for her before we sailed.

Q. That is, you and Judges Noyes, and his clerk, and the marshal? A. And Dickie.

Q. Judge Wickersham and his party?

(Deposition of Archie K. Wheeler.)

A. And Judge Wickersham and his party. They took another boat. Judge Wickersham got tired of waiting, and took another boat to southeastern Alaska.

Q. A Government boat?

A. No, sir, a regular steamboat.

Q. He gave up waiting for her?

A. He gave up waiting for her.

Q. Were you present at any conversation between Wickersham and Noyes when the matter of how to get to their respective places was discussed?

A. I was not.

Q. Did you hear any order that Judge Noyes received from the Department of Justice as to his going to Nome?

A. No, sir, I don't know whether he received any order from the department.

Q. When you and Judge Noyes left Minneapolis, it was not your intention to go to Nome with Alexander McKenzie?

A. I did not know him, not even by name, when I left Minneapolis.

Q. Was there any agreement or understanding that you know of at that time, that Alexander McKenzie should accompany Judge Noyes to Nome on the steamer "McCullough"?

A. No, sir, I never had spoken to Judge Noyes about McKenzie, nor he to me. I did not know the man.

Q. How did you come to take the steamer "Senator," you and Judge Noyes and the court party?

A. We were in Seattle twelve days, and there was no

(Deposition of Archie K. Wheeler.)

word received from the "McCullough," and Judge Noyes said he would take the "Senator."

Q. That was a regular passenger boat?

A. That was a regular passenger boat, and we went down and looked it over, and the Captain pointed out the accommodations for us.

Q. Was McKenzie with you when you secured accommodations?

A. No, sir; I went after my own. I do not know anything about the rest of them.

Q. There was not any concert between you, Judge Noyes and McKenzie as to securing accommodations on board the "Senator"?

A. No, sir; I went down and got my own ticket alone, without any other person. I don't know anything about the rest, when they got theirs.

Q. Was not the fact of you and Judge Noyes and the court party going on the "Senator" because of the failure of the Government transport "McCullough" to appear to take your party and the other party to Sitka?

A. Yes, sir, that was the reason.

Q. And not because of any arrangement between McKenzie and Noyes that they should journey together to Nome?

A. No, sir. I further understood last summer, while we were at St. Michaels, that the officers of the "McCullough" were expecting to take us from Seattle to Nome.

Q. Were you aboard the "McCullough" last summer at St. Michaels?

(Deposition of Archie K. Wheeler.)

A. No, sir, I was not. She was in the harbor, and the officers were ashore.

Q. Did you meet the officers?

A. No, sir, I did not.

Q. But you learned it was their intention to have picked the party up? A. Yes, sir.

Q. You are positive that McKenzie and Noyes did not travel together over the Great Northern from Minneapolis?

A. I am positive of it.

Q. You never met McKenzie until you met him at Seattle?

A. No, sir; about five days after I landed there.

Q. At Seattle? A. Yes, sir.

Redirect Examination.

Mr. MADISON.—Q. Was McKenzie as much a stranger to Judge Noyes as he was to you?

A. I don't know anything about it. In explanation of that, Mr. Madison, I will say, at that time I had lived less than two years in Minneapolis. My home is Michigan, so I did not live in Minnesota, even to hear of Aleck McKenzie in a political way. That explains my ignorance of Aleck McKenzie, or knowing anything about him.

Q. You do not know whether Judge Noyes knew him or not?

A. I do not. I knew Judges Noyes just about the same length of time I had been in Minneapolis, because I met him when I came there to live.

Q. As a matter of fact, Judge Noyes, McKenzie and

(Deposition of Archie K. Wheeler.)

Mr. Hubbard did go to Nome together on the same steamer? A. We all went on the same steamer.

Q. Are you going back to Nome now?

A. I expected to.

Mr. GEARY.—You need not answer that unless you want to.

Mr. MADISON.—Q. Are you going back to Nome now? A. I expected to.

Q. Are you still a clerk of Judge Noyes?

A. I don't know. I think I will decline to answer that question, if you wish to certify it to the Court.

Q. Why do you decline to answer that?

A. Just merely because I decline to answer it.

Mr. GEARY.—That is not any matter in regard to the citation against Judge Noyes.

Mr. MADISON.—I will certainly ask the Commissioner to certify that question to the Court, and take it up on Monday.

Mr. GEARY.—The Court meets on Friday. That is a matter I do not advise the witness not to answer.

Mr. MADISON.—I will ask this further question:

Q. I would like to ask you a line of questions to find out whether you are going to Nome, whether you are still the clerk of Judge Noyes, and whether you are going there to act as clerk; whether you expect to go there and act as clerk for Judge Noyes or not.

A. I can possibly answer those questions without burdening the record very much.

(Deposition of Archie K. Wheeler.)

Q. Answer the first question, then.

A. What is the first question?

Q. Are you still a clerk of Judge Noyes?

A. I never resigned my position with Judge Noyes, if a resignation was necessary. I am going back to Nome if I can get there, but expect to go to work for myself. I am going there with that intention.

Q. Is it your understanding that you are still in the employ of Judge Noyes?

A. I was paid when I left Nome, and paid all that was coming to me.

Q. Have you a claim now for any compensation?

A. I do not know whether I have or not.

Q. You have not resigned or been discharged?

A. I have not resigned or been discharged; no.

Q. Therefore, you are still the clerk of Judge Noyes?

A. Presumably. I have never resigned; never handed in any resignation; never been discharged.

Q. Do you intend to resign as soon as you reach Nome?

A. I don't know. I may never resign.

Q. You are going back there to fill the position?

A. I will not say yes to that. I am going back there, and expect to work for myself, not for Judge Noyes.

Q. And also as clerk before Judge Noyes?

A. No, sir, I don't expect to clerk for Judge Noyes.

Q. You do not expect to resign, then?

A. I did not suppose it was necessary, if I did not go to work for him.

(Deposition of Archie K. Wheeler.)

Q. I do not exactly understand what you mean. You may.

A. I mean I am going back to Nome in my own interest.

Q. Not as a clerk?

A. Not as a clerk of Judge Noyes. I cannot make it any plainer than that.

Q. You spoke about a riot having taken place at the bank. Were you present at that time?

A. There was no riot took place.

Q. What was referred to, then, was simply some reports of hearsay testimony; some reports you heard about it? A. Yes, sir; that is all.

Q. You say the news of this riot was brought to Judge Noyes. Were you present at the time the news was brought to Judge Noyes?

A. I was never present when any news of a riot was brought to Judge Noyes. There was no riot. I think, if I am not mistaken, word was brought to Judge Noyes that the two factions were practically on the verge of a riot, in regard to the gold-dust at the bank.

Q. Were you present at that time?

A. I will not say I was.

Q. You do not recollect of any person giving that message, or telling Judge Noyes anything to that effect?

A. It runs in my mind I was in the room when some person was talking about it. I cannot recall who it was.

Q. You cannot recall the situation at that time, in order to tell who was there and what was said?

A. No, sir, except in a general way.

(Deposition of Archie K. Wheeler.)

Q. You say that Judge Noyes feared there would be a riot. You cannot tell that?

A. I cannot tell what Judge Noyes feared.

Mr. GEARY.—I wish it to appear upon the record that I do not appear for Noyes or Wood in any of these proceedings.

ARCHIE K. WHEELER.

Subscribed and sworn to before me this 31st day of May, 1901.

E. H. HEACOCK,

United States Commissioner, for the Northern District of California, at San Francisco.

(The further taking of testimony in these matters is postponed, at the request of the amicus curiae, until Monday, June, 1901, at 10 o'clock A. M.)

Deposition of O. P. Hubbard.

Monday, June 3, 1901.

O. P. Hubbard, having been duly sworn in all three cases, testified as follows:

The WITNESS.—I desire to say, I do not desire to testify in the matter of the contempt proceedings against Judge Thomas J. Geary, for the reason that I was not subpoenaed to testify in that case, and, having seen Judge Geary after the subpoena was served on me, I told him that I had not been subpoenaed to testify in his case, and I would not want to testify now without his either being

present or being notified that I was called upon to testify in his matter.

Mr. MADISON.—I have no intention of examining the witness in respect to the proceedings against Thomas J. Geary, but only in the matters of Judge Arthur H. Noyes and Joseph K. Wood, although the witness is sworn in all three of the cases.

Q. State your name, age, residence and occupation.

A. My name is O. P. Hubbard; residence, I suppose Nome; age, 43; occupation, practicing attorney.

Q. Were your residence and profession the same during the months of July, August, September and October, 1900? A. Yes.

Q. Were you a member of any firm?

A. Yes, sir.

Q. What was the name of the firm?

A. Hubbard, Beeman & Hume.

Q. Is that firm still in existence? A. Yes, sir.

Q. You were the senior member of the firm of Hubbard, Beeman & Hume, and as a member of that firm practiced your profession as an attorney at Nome, Alaska, during July, August, September and October of the year, 1900; is that correct?

A. Yes, sir. I did not reach Nome, though, until the 19th of July, I think it was. I was not there during the entire month of July.

Q. Were you at Nome during all of the time after the 19th of July, until the 15th day of October, 1900?

A. Yes, sir.

(Deposition of O. P. Hubbard.)

Q. Were you the attorney for the plaintiff in the case of Chipps and Others vs. Lindeberg? A. Yes, sir.

Q. And also in the cases of Rodgers vs. Kjellman, Melsing vs. Tornanses, Comptois vs. Anderson, and Webster vs. Nakkella?

A. Yes, sir, we were attorneys for those parties, but the original suits in Rodgers vs. Kjellman and Webster vs. Nakkella were started by Mr. Hume before the partnership was formed. I do not know I can say that the partnership went into effect until I reached Nome.

Q. Which was the 19th of July?

A. Yes, sir. Mr. Hume had been practicing there the year before on his own account, and Mr. Beeman and I had been practicing together.

Q. Were any of those cases pending on the 19th of July?

A. Yes, sir, some of them were; that is my understanding, that all of them were except Chipps vs. Lindeberg.

Q. There were orders appointing receivers in each one of those cases made on the 23d of July, 1900, were there not?

A. I am not certain about Webster vs. Nakkela.

Q. With that exception?

A. I think with that exception; that is correct.

Q. In each instance, Alexander McKenzie was appointed receiver, was he not?

A. Yes, sir, that is my understanding; I think that is correct. The record shows that.

Q. By whom were the orders signed appointing Alexander McKenzie receiver?

(Deposition of O. P. Hubbard.)

A. I take it, they were signed by Judge Noyes. The orders made would show. I do not desire to testify to the records of the court up there. That is my understanding.

Q. Did you arrive in Nome on the 19th of July?

A. It was either the 18th or 19th, I think.

Q. Did you arrive there with Judge Noyes?

A. He was on the same boat that I went up on.

Q. And Alexander McKenzie also?

A. Yes, sir; they were both on the same boat.

Q. You three went on the same boat and arrived together?

A. Yes, sir; arriving on the same day, of course.

Q. You were all friendly and acquainted with one another?

A. I do not know that I can say that. I do not think I had spoken to Judge Noyes more than two or three times; just simply passed him on the boat and spoke to him.

Q. You were not unfriendly with him?

A. No, sir, but I could not say I was friendy with a man I had so slight an acquaintance with as I had with him. I certainly did not have any unfriendly feeling towards him, or anything of that kind.

Q. You were friendly with Alexander McKenzie?

A. Yes, sir.

Q. You knew him very well?

A. Yes, sir, I had known Alexander McKenzie for some months prior to going to Nome.

(Deposition of O. P. Hubbard.)

Q. You had had business transactions with him?

A. Yes, sir.

Q. Acted as his attorney?

A. I acted as attorney in matters in which he was interested; yes.

Q. How soon after your arrival at Nome was application made to Judge Noyes in these four cases of which we have spoken, for the appointment of a receiver?

A. I would not be certain as to the number of days. It was shortly after he arrived there that the applications were made, but as they were presented by Mr. Hume, and I was not in court at the time—in fact, at no time when the matter was presented to the court—I could only give you an approximate answer as to the matter.

Q. Did you see the orders before or after they were signed?

A. I think I must have seen them after they were signed. They were a matter of record there, and I frequently saw the files in each case.

Q. Did you see them before they were signed?

A. I do not recall that I did. My impression is that Mr. Hume drew the orders, and the chances are that I did not see them.

Q. Did you speak to Judge Noyes respecting the orders or respecting the appointment of a receiver?

A. No, sir, never at any time; in fact, I don't think I saw Judge Noyes after he came ashore, until he went to St. Michaels, unless it was on the street.

(Deposition of O. P. Hubbard.)

Q. When did he go to St. Michaels?

A. I do not think he was there more than a week before he went over to St. Michaels.

Q. Do you remember when he arrived at Nome?

A. I think we went into the harbor there, or landing, on the 18th or 19th; it may have been a day earlier than that, but I would not be positive as to the exact date.

Q. From the time you went ashore, for a week after that time, which would carry it over to the 25th or 26th of July, did you see Judge Noyes at all?

A. I do not recall that I saw him. If I did, it must have been on the street passing. I was not before him in any matter, and I did not go to his room.

Q. You did not speak to him?

A. I do not think so. I cannot recall any occasion when I spoke to him. I left the boat immediately upon our arriving at Nome—went ashore in a small boat before they landed the passengers. Judge Noyes came ashore. I did not see him come ashore. I do not think I anything more than saw him on the street, if that, until after he came back from St. Michaels.

Q. At the time you went ashore, did you have in mind any proceedings, or have in contemplation any proceedings, looking to the appointment of a receiver in any of these cases?

A. It had been our intention to ask for receivers in contested litigation.

Q. You say "our." Who do you mean?

A. My partner, Mr. Beaman, was in there during the

(Deposition of O. P. Hubbard.)

entire winter; he stayed over. Mr. Hume went into Alaska probably a month ahead of me, maybe six weeks. It was our intention the fall before to make an application for receivers in these cases. In fact, we had already done so before Judge Johnson, except in Chipps vs. Lindeberg. That suit had not been commenced the year before. I do not want to say positively either that Mr. Hume had made an application in Rodgers vs. Kjellman. He had an application before Judge Johnson in one or two cases, but, as I was not with him, I would not want to testify positively to that. In our cases, we had presented the matter for the appointment of a receiver to Judge Johnson the year before.

Q. You say the case of Chipps vs. Lindeberg was not pending when you arrived in Nome?

A. No, sir, that case was not pending, and had never been started until we arrived in Nome last year.

Q. The case of Rodgers vs. Kjellman: When was that commenced?

A. That was one of Mr. Hume's cases. I do not want to testify to that. I do not know what he did with that. He instituted the suit, and possibly made an aplication for a receiver before Judge Johnson. I do not say that positively, now. I was not with him at that time.

Q. You knew nothing of that case when you arrived at Nome?

A. Nothing more than that Mr. Hume was their attorney. That is as far as I can speak positively.

(Deposition of O. P. Hubbard.)

Q. You heard of it as a suit pending over a very rich placer claim?

A. I did not know anything about 2 Below. I did not know it had been opened or developed.

Q. Melsing vs. Tornanses: When was that commenced?

A. That was commenced the year before, before Judge Johnson.

Q. That is, in the summer or fall of 1899?

A. I think it was in the month of August that Judge Johnson was there. I would not want to swear to the date.

Q. 1899?

A. Yes, sir; it might have been as late as the first of September or as early as the latter part of July. I think August was the month.

Q. With respect to the case of Comptois vs. Anderson?

A. That was brought the year before, and the affidavit for receiver was presented to Judge Johnson.

Q. In August or September, 1899? A. Yes, sir.

Q. By Mr. Beeman?

A. By Hubbard and Beeman, who were then acting as a firm.

Q. Had you been at Nome before July, 1900?

A. Yes, sir, I went to that part of Alaska first in the spring of 1898.

Q. After these suits were brought, you came out of Nome, and were away from there during the winter of 1899 and the spring and summer of 1900?

(Deposition of O. P. Hubbard.)

A. Yes, sir.

Q. And then went back?

A. I came down each fall, and returned in the spring.

Q. You say that soon after you arrived in Nome, you took up this matter with respect to the appointment of a receiver, with Mr. Hume?

A. When I arrived there, my partners were then working on the papers in other cases, I think, and probably before I arrived they had been doing some work on it, as Mr. Hume had gone in a month ahead of me; probably a little over a month.

Q. Did you enter into negotiations of partnership prior to his going to Nome?

A. Our negotiations with reference to the partnership took place the fall before, with the understanding that the partnership should go into effect when we arrived in Nome this last season.

Q. Did Mr. Hume know that Judge Noyes and Mr. McKenzie were to arrive on or about July 19th?

A. No, sir, I do not think he knew anything about it at all. I had not communicated it to him in writing, and I do not see how he could have known it.

Q. Did you suggest to Judge Noyes that he appoint Mr McKenzie receiver in any one of these cases?

A. No, sir, I did not.

Q. Was it suggested to Judge Noyes, at your instigation or request, directly or indirectly through you, that Mr. McKenzie should be appointed receiver?

A. No, sir, it was not.

(Deposition of O. P. Hubbard.)

Q. Do you know who suggested it?

A. I do not.

Q. In any of these cases?

A. No, sir. I did not go before Judge Noyes in the matter at all, and I had no conversation with him at any time in reference to the matter, on or off the bench.

Q. Do you know where the order was signed appointing the receiver? A. I do not.

Q. Were you not present at the time?

A. I was not.

Q. Mr. Hume was attending to the whole matter?

A. Mr. Hume had the matter of the presentation of the cases to Judge Noyes, and where he presented them, or how he presented them, I do not know.

Q. Are you prepared to testify anything with respect to the orders appointing a receiver; that is, as they were first drawn and submitted to Judge Noyes, and any changes that were made in them at Judge Noyes request, and the form that was afterwards drawn that was presented to him for his approval, which he signed, respecting any changes between the orders as presented and the orders as signed?

A. I cannot testify anything about it. I do not know anything about any suggestion he made, or any changes.

Q. Had you talked with Alexander McKenzie prior to your arrival at Nome, respecting the appointment of any receiver in any of these cases, or over any of these claims?

(Deposition of O. P. Hubbard.)

A. I told Alexander McKenzie I was going to make an application for receiver in these cases.

Q. He knew that applications would be made to Judge Noyes for the appointment of receivers?

A. He knew what I had said to him.

Q. The matter had been talked over with him?

A. In that form, yes.

Q. Did he talk in your presence, or did he say anything to you with respect to any talks he had had with Judge Noyes about the matter?

A. Never at any time.

Q. There was no conversation between you and Judge Noyes respecting the appointment of a receiver?

A. Not a word, never.

Q. You were at Nome on the 14th of September, 1900?

A. Yes, sir.

Q. That is the day that the writs of supersedeas arrived there? A. Yes, sir, I was there at that time.

Q. Were copies of the writs served on you at that time?

A. It is my recollection that they were, yes; if that is the correct date.

Q. That is the correct date; that is, on or about that time; I think it was the 14th that they were served on you.

A. It is my recollection that I received copies of the writs at my office.

Q. Did you consult with Judge Noyes? Did you see Judge Noyes and talk with him about this matter, or any

(Deposition of O. P. Hubbard.)

other matter, shortly after the service on you of that writ? A. I did not.

Q. When was the first time that you saw Judge Noyes after that time?

A. I could not state, because I do not remember what the occasion was for my having seen him after that time, but my understanding is, at the time the writs came in, Judge Noyes was sick, and I know I did not see him in his room while he was sick, so I must have seen him after he got out, whenever that was.

Q. He was sick on the 14th, 15th and 16th, and the 17th was Monday. I believe he held court on the 17th of September.

A. I do not know whether he did or not; I could not say that he did or did not.

Q. And made orders staying proceedings in these cases?

A. An order was entered, I think, staying proceedings. Whether he went to the courthouse to do it, or whether he signed the order in his room and had the clerk enter it, I do not know.

Q. Don't you remember that on Monday, the 17th, the Court called the calendar, and you were present at the calling, at Brown's Hall?

A. On Monday, the 17th?

Q. Yes.

A. I was present at Brown's Hall, I remember, when he called the calendar once; but I would not say it was the 17th.

(Deposition of O. P. Hubbard.)

Q. The first general calendar that was called?

A. I do not hardly think I was present at the first general calendar. I think Mr. Beaman and Mr. Hume were there, but I do not think I was. I might be mistaken in that. I don't recall that I was present.

Q. Was not Mr. Hume sick in bed at that time?

A. No, sir, I think not.

Q. You remember that Mr. Hume was sick in bed?

A. Yes, sir, but it was later than that.

Q. For how long a period was he sick in bed, and not attending to his business?

A. He must have been down three weeks, anyhow.

Q. Was it not about that time?

A. I think he was out when the writs came in.

Q. I am speaking of events that transpired three days after that.

A. I think Mr. Hume was out. I do not think he was sick then.

Q. Do you remember that an affidavit was prepared, and Mr. Chipps signed and swore to it, upon which an injunction was asked for afterwards?

A. That must have been some time later than that which you speak of.

Q. I think the affidavit was signed on the 18th or 19th of September.

A. I would not want to testify to it, because I do not remember. The affidavit will show when it was filed.

Q. It was not filed, I think, until October 6th.

A. I would not testify to that from recollection. The affidavit will show just when.

(Deposition of O. P. Hubbard.)

Q. Do you remember the affidavit? Do you remember being in court and presenting the affidavit?

A. The matter was presented, yes, and I am inclined to think I was there.

Q. Did you not present it yourself?

A. I do not recall distinctly about that matter, whether I did or whether some one else did.

Q. Don't you remember that the affidavit was prepared by you, or in your office?

A. I think it was, yes. It might not have been, however, but I think it was. That is my recollection of it now.

Q. And signed and sworn to by Robert Chipps?

A. Yes, sir, he signed it and swore to it.

Q. Was he not your client at that time?

A. Yes, sir.

Q. And the affidavit recited that an alleged writ of supersedeas had issued out of this court, and had been served on you and upon the receiver?

A. I would not testify to the contents of the affidavit. It is on file, as I say, and will show exactly what it is. I would not want to testify to the contents, because I have not seen it since that time.

Q. Do you remember who drew the affidavit up?

A. I do not distinctly. I remember that an affidavit of that kind was drawn, but we were drawing papers and affidavits and statements continually. I would not say now.

Q. Are you prepared to say whether or not you drew it up.

(Deposition of O. P. Hubbard.)

A. No, sir, I am not prepared to say whether or not I did.

Q. Do you remember the affidavit recited that the defendants in the action under the writ had taken forcible possession of the placer claims?

A. As I say, I have not seen the affidavit since it was drawn and filed and I do not want to testify to the contents of it. It is on file, and possibly a copy of it is here now.

Q. Did Mr. Beeman have anything to do with any of these cases, or of the orders or motions, during the period between July 19th and October 15th, 1900?

A. Well, I cannot testify as to what Mr. Beeman did or did not do. He was a member of the firm there, of course.

Q. As far as your knowledge goes.

A. I don't think Mr. Beeman was present in court at the time when the applications were made. I do not think he was, but he might have been. I was not there, so I could not testify who was present.

Q. The applications in the first instance were for a receiver? A. Yes, sir.

Q. You stated a little while ago that Mr. Hume had attended to all of the matters. I would like to know if Mr. Hume did so exclusively.

A. I do not mean to say Mr. Hume did exclusively. I mean to say that Mr. Hume presented the matter to Judge Noyes in the first instance on the application for receivers in these cases. That is what I intended to

(Deposition of O. P. Hubbard.)

say. There were affidavits and statements to be procured, and in that matter Mr. Beeman and I assited, of course.

Q. Were you present on or about the same time, during the forepart of the month of October, 1900; when Mr. McKenzie withdrew some gold-dust from the vaults of the Alaska Banking and Safe Deposit Company?

A. No, sir, I was not. I remember to have been in the bank with Mr. McKenzie once during the season, but he was there at that time to procure some currency that he had in his separate box. It was not with reference to gold-dust at all.

Q. Do you remember that he did withdraw some gold-dust at one time? A. I did not know he did.

Q. You knew nothing about that?

A. I knew nothing more than an outsider, as to what was going on in the vaults, or the receivers' matters, except such matters as came up in court.

Q. Did your firm know anything about the withdrawal of this gold-dust, so far as you know?

A. My answer to that is that I do not know if they had any knowledge of it at all.

Q. Was Mr. Hume sick at that time?

A. Let me get the date of that.

Q. I think that was October 9th.

A. I should say that he was, yes, at that time.

Q. During his sickness, were you attending to the litigation?

(Deposition of O. P. Hubbard.)

A. I had charge of all matters in the office during his sickness.

Q. Was Mr. Beeman there at that time?

A. October 9th? I do not think he was.

Q. So that, during all that period, you would know everything that was done by your firm?

A. Yes, sir, I would be advised as to what was taking place at that time.

Q. Did you or your firm, as far as you know, ever prevent, directly or indirectly, Mr. McKenzie from complying with the orders or writs of supersedeas from this court which arrived in Nome on September 14th? To make it more definite, I will ask you this: Did you ever tell him that you would not consent to his obeying the orders of the Court in returning the gold-dust to the defendants?

A. No, sir, I never told him anything of that kind.

Q. Nothing of that kind at all?

A. No, sir, nothing of that kind.

Q. Did you ever tell anybody anything of that kind?

A. I do not think that question is proper under this examination, in regard to Judge Noyes; that it would not be anything against Judge Noyes if I had or had not. I think I will simply object to answer the question upon that ground. If the Court rules that I must answer, I will do so. Read the question, Mr. Reporter. (The reporter reads the previous question.) In answer to that part of the question which says, did I or any member of the firm

(Deposition of O. P. Hubbard.)

ever prevent Alexander McKenzie from complying with the writs, I answer that we did not.

Q. After the 14th of September, 1900, or on or about that time, shortly after that time, did you not notify Mr. McKenzie that he should not turn over the gold-dust that he held as receiver, or any part of it, and if he did, you would hold him responsible on his bond?

A. No, sir, not in that way.

Q. In what way did you?

A. I think that possibly at some time after the 14th, I do not know whether it was to Mr. McKenzie or to whom it was, but I think we said that if the gold-dust was released improperly, we should look to the bond.

Q. How was it to be released improperly?

A. That was a question of law, as to what construction was to be put on the writs, or the true construction.

Q. How did you give that notice to Mr. McKenzie?

A. I do not remember about it. I know it was not given in writing. I do not remember whether I had a conversation with Mr. McKenzie or with Judge Geary, who was his attorney. I do not recall how it was now.

Q. Do you know who was present at the time?

A. I do not remember that any one was present. I do not recall where it was. My recollection is that it was either stated to the receiver or to his attorney.

Q. By yourself?

A. That I am not positive of, but I am inclined to think it was.

Q. The effect of the communication to Mr. McKenzie

(Deposition of O. P. Hubbard.)

was that if he did turn over the gold, that you would hold him responsible upon his bond for the gold-dust?

A. No, sir, it was not that. It was, if he released the gold when he should not release it. I was not construing the writs for Mr. McKenzie. He had an attorney to do that.

Q. As you construed the writs, did they not require him to turn over the gold-dust?

A. I had no occasion to construe the writs. I had nothing to do with Mr. McKenzie as receiver.

Q. It was in respect to these writs that you so advised him? A. I did not advise him.

Q. Notified him.

A. You might say notified him. If the gold-dust was released when it should not be released, illegally, we should look to the bond in case we lost the gold-dust, of course.

Q. At that time you were referring to his action, or any contemplated action he might take, on account of the writs of supersedeas which had been served upon him?

A. These questions are all with reference to Alexander McKenzie and not with reference to Judge Noyes.

Q. I expect to connect them with Judge Noyes.

A. Read the question, Mr. Reporter (The reporter reads the previous question) I did not know anything about his contemplated action, or what he was going to do. He had his attorney, and I knew his attorney was advising him.

(Deposition of O. P. Hubbard.)

Q. You knew the writs had been served on him?

A. I took it for granted that they had. I did not know it. I assumed that to be the case.

Q. Were you not present on September 14th, in Mr. McKenzie's office, at the time Mr. Metson made a demand on Mr. McKenzie for him to comply with the writ of supersedeas in Chipps vs. Lindeberg, which had been theretofore served on him?

A. Yes, sir, I was present.

Q. And at the time Mr. Metson demanded that Mr. McKenzie comply with the writs of supersedeas?

A. Yes, sir; Mr. Metson made a written demand at that time for compliance with the writ.

Q. And requiring Mr. McKenzie to turn over the gold-dust?

A. Yes, sir; I heard the demand read, I think by Mr. Metson. I would not state now just what the contents were. That is the purport of it.

Q. The purport of it was to turn over the gold-dust?

A. Yes, sir; the purport of it was to turn over the gold-dust. I remember what Mr. McKenzie's answer was in that connection.

Q. It was after that that you notified Mr. McKenzie that you would hold him responsible if he turned over the gold-dust?

A. That is my recollection, that it was after that.

Q. Did you not have a conversation with Judge Noyes about that time? A. Pertaining to what?

Q. Pertaining to the writs of supersedeas?

(Deposition of O. P. Hubbard.)

A. No, sir, I think not.

Q. Did you not have a conversation in Judge Noyes' office on September 17th, relating to the writs?

A. I think not.

Q. Did you not have a conversation with him at that time in which the appealability of the order appointing a receiver was talked about?

A. I do not think at that time. The question of the appealability of the order had been discussed and talked over before these writs came in.

Q. Afterwards was it not talked about?

A. I do not see why it would have been. I do not recall any such conversation.

Q. Will you swear there was no such conversation?

A. If I had any conversation with Judge Noyes at that time, I do not recall it. I do not think I had.

Q. After the writs of supersedeas, and the order allowing the appeals, reached Nome, and it was found that Judge Morrow had held that the order was appealable, and allowed the appeal, was there not a conversation with Judge Noyes in respect to the action of Judge Morrow?

A. Do you mean, did I have a conversation?

Q. Yes. A. No, sir, I do not think so.

Q. Were you present at any such conversation?

A. Can you tell me who else was there, so as to give me some idea?

Q. Mr. Geary was present.

A. I will simply say this: I do not recall any definite

(Deposition of O. P. Hubbard.)

or particular conversation at any time; but I will say that frequently, about the court chambers, there, these matters were spoken of, just as attorneys talk about matters in open court, before the court convenes, frequently. I do not remember ever to have gone to Judge Noyes for the express purpose of talking with him about the appealability of the orders appointing receivers.

Q. You were present when Judge Noyes talked about the appealability of the order appointing a receiver, or with respect to the validity of the writs of supersedeas, or the power of Judge Morrow to allow the appeal from the order appointing a receiver, or the effect of any order or writ issued by the clerk, being in excess or beyond the order made by the judge or court?

A. I heard it talked of somewhere there about a difference in the language of the order and the language of the writ; but, as I say, I had no particular conversation with Judge Noyes about it.

Q. I am not talking about any particular conversation, but did you not have a conversation with Judge Noyes about the matter?

A. If I had a conversation, it would be a conversation.

Q. You say you never went there for the particular purpose of talking the matter over?

A. That is what I say. In the courtroom or chambers, I might have heard the matter spoken of. I know that all the attorneys were discussing the matter back and forth, sitting around. I had no conversation with Judge Noyes that I can now recall about the appeala-

(Deposition of O. P. Hubbard.)

bility of the order appointing the receiver, except I might have been present when that matter was discussed before him at the time the appeal was asked for.

Q. I am not talking about prior to September 14th at present.

A. I have told you several times, I do not recall any conversation with Judge Noyes upon that subject after the 14th.

Q. Do you recall that Judge Noyes expressed himself as being of the opinion, after September 14th, that Judge Morrow's orders were erroneous or void?

A. No, sir, I never heard Judge Noyes say that in my life.

Q. Or that the order of the clerk was void, the writ which the clerk had issued and sent up there was void, in so far as it directed any change in the possession of the property?

A. I do not recall that I heard any conversation of that kind by Judge Noyes.

Q. Did you ever hear him make any statement to that effect?

A. No, sir, I do not recall that I did. I do not see why I should have heard any conversation of that kind. I do not want to put in this record a lot of immaterial matter.

Q. Did not Judge Noyes tell you that he thought the action of Judge Morrow was unwarranted, or that his orders or writs were void?

A. No, sir, he did not.

(Deposition of O. P. Hubbard.)

Q. Did he express to you any opinion with respect to Judge Morrow's action down here, or with respect to the action of the Circuit Court of Appeals?

A. No, sir, he did not.

Q. At no time? A. At no time.

Q. Was there an understanding or agreement or stipulation to which you were a party, and in any one of these cases, that the receiver could take the gold-dust, or a portion of the gold-dust, from the safe deposit boxes, upon the consent of the attorneys for the defendants, and that if he got the consent of the attorneys for the defendants, then the Court would make an order directing him to take the gold-dust out?

A. I do not recall a stipulation of that kind having been presented to me.

Q. Was there an agreement that the gold-dust should remain in the boxes, and should be taken out when such a stipulation was obtained, that is, from the receiver on the one side, and the attorneys for the defendants on the other?

A. I know there were quite a good many stipulations. I cannot recall one to that effect. There were stipulations frequently presented to us to sign, not that we had anything to do with the matter, but we were attorneys for the plaintiff, and they would ask us to sign these stipulations, which were generally stipulations between the receiver and the defendants, Mr. Metson's and Mr. Knight's clients. It was for the purpose of getting possession of gold-dust for certain purposes. I not having anything to

(Deposition of O. P. Hubbard.)

do with the matter, paid very little attention to those stipulations. If the receiver's attorney signed them, I always signed them when they were presented, and paid very little attention to them.

Q. Why did you pay so little attention to them?

A. I did not think we were in a position to interfere. I did not want to interfere with what the receiver was doing, or what the defendants wanted, so long as it was a matter that the receiver and his attorneys were willing to consent to. We were never in possession of any gold-dust or any of these properties at any time.

Q. When did Mr. Beaman leave Nome?

A. I do not remember the date; the latter part of September; I should think after the middle of September.

Q. About September 19th?

A. I would not be positive about the date. I think it was after the middle of September.

Q. On what steamer was it?

A. I think it was the "Nome City," if there is a steamer of that name; I think it was the "Nome City" that he came out on.

Q. I will show you this affidavit of Robert Chipps, made in the case of Chipps vs. Lindeberg, and ask you if, having looked at it, you can recall who drew the affidavit, and who was present at the time?

A. I could not be positive who drew the affidavit. I see the notary who executed it is Mr. Freedman. He was not the notary in our office.

Q. Were you present when it was dictated?

(Deposition of O. P. Hubbard.)

A. I would not say that I was; I do not recall that I was.

Q. Do you recall that Mr. Dubose dictated this to a stenographer in your office, and at the time he dictated it Mr. McKenzie was present?

A. If anything of that kind took place, I do not recall it. I do not think he did.

Q. Did you draw this affidavit?

A. I do not remember that I drew it. I cannot recall now that I did.

Q. Mr. Hume was sick at that time?

A. I think he was.

Q. And was sick for some weeks afterwards?

A. What is the date of that again?

Q. The 29th of September.

A. Yes, sir, he was sick, I think, for some little time after that. Mr. Hume could not have had anything to do with that affidavit.

Q. Do you recollect that at this time, it was decided to apply to the Court there for an injunction?

A. Yes, sir, that was undoubtedly the case.

Q. To prevent the defendants in this case from taking the gold-dust out of the jurisdiction of that court?

A. Yes, sir, that was the purpose of the injunction.

Q. And those proceedings for the injunction were instituted by you, were they not?

A. I am not certain whether I presented them to the Court, or whether they were presented by some one else. I am not positive about that. I do not think I presented them.

(Deposition of O. P. Hubbard.)

Q. I will now show you a copy of a motion made to Judge Noyes, in the District Court of Alaska, in the case of Chipps vs. Lindeberg, by the firm of Hubbard, Beeman & Hume, as attorneys for the plaintiff, for a restraining order restraining the defendant in that case from working the placer claim, and restraining the defendants, their agents and employees from taking out of the jurisdiction of the court any gold taken from the Discovery claim, which was the subject of that action or suit, and ask you if that motion was made to the Court on October 6, 1900 —to Judge Noyes?

A. A motion to that effect was presented to Judge Noyes possibly on the 6th. I do not remember the date outside of what the record shows in the matter.

Q. And that was based upon the affidavit of Robert Chips? A. It so states.

Q. That is a fact, is it not?

A. The record states it. The motion itself states it.

Q. Was that made in Chambers or in court?

A. That I do not remember. As I say, I do not remember that I made the motion myself.

Q. If any member of your firm did make the motion, it must have been made by you.

A. It must have been made by me, if any member of our firm made it.

Q. Do you recollect whether it was made by Judge Dubose or Judge Geary?

A. I do not think Judge Geary could possible have made it, or had anything to do with it, but it is possible

(Deposition of O. P. Hubbard.)

that Judge Dubose did. I do not say he did. He was an attorney in the matter.

Q. Did he act for the receiver at any time?

A. That I do not know.

Q. Did he ever appear in court as attorney for the receiver?

A. Not as far as I know. As I was not in court when these proceedings were presented first, and as much of the argument took place after Judge Noyes came back from St. Michaels, I do not know much about what was done in court.

Q. Was not that motion first presented to Judge Noyes in Brown's Hall by Mr. Dubose, and in your presence, and subsequently that evening the argument was made by Mr. Dubose and Mr. Geary, and the argument was based upon the theory or principle that the Court below had no jurisdiction or power to grant the writs of supersedeas, and therefore they were void?

A. As to the first part of the question, about it having been presented in Brown's Hall first, I am inclined to think you are right about that. As to what Judge Dubose's argument was that night, I could not say now. I was sitting in the outer room. I know that Mr. Metson made quite a lengthy argument, and Judge Dubose talked a short time, and I think Judge Geary said something.

Q. In support of the motion?

A. I do not know whether it was in support of the motion. I would not undertake to say what his statement was.

(Deposition of O. P. Hubbard.)

Q. Do you think it was opposed to it?

A. I do not think anything about it, because I do not recall what Judge Geary said. I would naturally infer that his argument, if it was an argument at all, would have been in favor of the motion. As I do not recall what he said, I would not testify to it. I did not take part in the argument, nor did I read the authorities that they were relying on.

Q. Did you obtain from Judge Noyes, on the 6th of October, 1900, an order to show cause why a restraining order should not issue, in the words and figures following:

"United States District Court for the District of Alaska, Division No. 2.

ROBERT CHIPPS,
Plaintiff,
vs.
JAFET LINDEBERG et al.,
Defendants.

Upon the reading of the motion of the plaintiff for an injunction, and the affidavit thereto attached, and the complaint in the above-entitled cause, it is ordered that the defendants herein show cause before me, at my chambers, in the Court Building, Steadman Avenue, Nome, Alaska, on Monday, the 8th day of October, A. D. 1900, at the hour of —— 30 A. M. why an injunction should not issue restraining you from the further working of the

(Deposition of O. P. Hubbard.)

Discovery Placer Mining Claim, Cape Nome Mining District, District of Alaska, and restraining you from deporting from the jurisdiction of this Court any gold-dust or gold taken out of said Discovery Placer Mining Claim on Anvil Creek, Cape Nome Mining District, District of Alaska"— or an order substantially in the foregoing words and figures.

A. It is my recollection that an order to that effect was signed by Judge Noyes. I do not remember who obtained it.

Q. Do you remember whether you obtained it?

A. No, sir, I do not.

Q. You do not remember that you did not?

A. I do not remember that I did not, nor do I remember that I did. The record shows that Judge Noyes signed an order to that effect, and the record is much better than my memory.

(A recess was here taken until 2 o'clock P. M.)

Afternoon Session.

O. P. Hubbard, examination continued.

Mr. MADISON.—Q. Mr. Hubbard, we were speaking before recess about an application made by the plaintiffs in the case of Chipps vs. Lindeberg for a restraining order. I will ask you if on the 10th of October, 1900, Judge Noyes made an order and decision upon that motion in the words and figures following, to wit: "Upon reading the motion of plaintiff for an injunction, order, and the affidavit thereto attached to the complaint, and all papers filed in the above-entitled case, it is now ordered that you

(Deposition of O. P. Hubbard.)

Joseph Lindeberg, Erik O. Lindbloom and John Brynteson, and each and everyone of you, your agents, servants and employees, and attorneys, and every one working under the direction of you, your agents, servants and employees and attorneys, be and are hereby enjoined from moving, assisting in moving, causing to be moved, or allowing to be moved, any gold or gold-dust taken out of the said placer mining claim known as Discovery Claim, on Anvil Creek, Cape Nome Mining District, District of Alaska, U. S. A., to any place away from and outside of Nome precinct, District of Alaska, U. S. A., and from your possession."

(Signed) "ARTHUR H. NOYES, Judge of said District Court, District of Alaska, Second Division. Dated October 10, A. D. 1900, in Chambers."

A. I cannot say any more than the record shows.

Q. This is not a part of the record; it is a part of the affidavit.

A. The record will show exactly what was done. I could not add anything to the record.

Q. Is it your recollection that that order was made?

A. Yes, that a restraining order was made. I would not say that is the order, or that that is the date.

Q. Substantially to that effect, however?

A. I would not want to testify as to the contents of the order.

Q. The one which restrained the defendants from taking gold-dust out of Nome precinct.

A. The record must show for itself. I would not at-

(Deposition of O. P. Hubbard.)

tempt to state as to the records of the court without having them before me.

Q. That was what it was applied for, substantially, and the order was obtained?

A. The affidavit of motion, and all, were filed, and they show.

Q. After September 14, 1900, you were in communication with Mr. McKenzie, were you not?

A. I do not think I understand what you mean by "in communication."

Q. In friendly communication, and advising him, and talking with him?

A. No, sir, I was not Mr. McKenzie's attorney in these matters; I did not assume to advise him in regard to the receivership matter. I consider Mr. Geary his attorney.

Q. Did you not talk with him with respect to any action that Judge Noyes might take up there?

A. I do not think so. I do not see why I would.

Q. You do not recollect of any instance?

A. I was present at the time that you spoke of this morning, when Mr. Metson made his written demand.

Q. The first time the writ was served?

A. Yes. I heard what Mr. McKenzie said to Mr. Metson at the time. I knew in that way what his course was going to be; that is, he was going to have Mr. Geary give him a statement or an opinion as to what course he should pursue under the writs. That is the way I got my information. I did not see the decision that Judge Geary gave him, but I understood as hearsay, you might say, that he did give him an opinion, but what it was I do not

(Deposition of O. P. Hubbard.)

know; I did not see it. I had there a large number of cases outside of these receivership matters and my time was pretty well taken up in my own business without looking after Mr. McKenzie's affairs.

Q. You were very friendly with him, were you not?

A. Yes, we were friendly, certainly; but I was friendly with the attorneys on the other side, so far as I know, at all times, and with all their clients; I never knew anything to the contrary.

Q. You had acted as Mr. McKenzie's attorney?

A. Not in these matters you are inquiring about, at no time.

Q. But, prior to going to Nome, in other matters which were connected with this litigation up there, you acted as his attorney, did you not?

A. No, I do not regard the matters as being connected with the litigation at all.

Q. When you went there had Mr. Chipps made a deed of his interest in the property involved in the case of Chipps vs. Lindeberg to you as trustee for the company with which Mr. McKenzie was connected?

A. No, not prior to going there.

Q. Was there a deed in existence at that time to your knowledge? A. What kind of deed?

Q. Made by Chipps, having an interest in the properties.

A. Chipps conveyed a large number of properties, twelve or fourteen I think, to Mr. McKenzie, but not this contested property to my knowledge. One instrument made by Chipps to McKenzie in New York I did not see.

(Deposition of O. P. Hubbard.)

Q. Had he conveyed his interest to this contested property?

A. I do not know. McKenzie may have had a deed from him; I could not say whether he had or not. The deed which Chipps made to the contested claim was not delivered to McKenzie, but was returned to Chipps.

Q. Were there not certain deeds made to you as trustee?

A. Yes, a later date than you are fixing.

Q. When was that?

A. I could not recall the date; I should judge later than the date you are talking about.

Q. Was there no deed to you as trustee prior to September 14th?

A. I do not think so. I do not want to testify to anything that is in the record, because these dates I cannot recall. The record shows what it is.

Q. Was Mr. Chipps the owner of the claimant, so far as you know; had he possession of what he claimed—I do not mean possession, but did he have title to what he claimed to own when he brought the suit of Chipps vs. Lindeberg?

A. I ought not to testify to these facts; it is a matter between me and my client.

Q. I do not want you to give any professional secrets away.

A. You are asking me to go into my client's affairs. While I have no desire to conceal anything, the records will show exactly what was done. I could not add any-

thing to it or take anything from it. Those deeds are all of record.

Q. There are no deeds that are not of record as respect to matters of litigation?

A. If there are others I do not know of them.

Q. You are acquainted with Mr. Joseph K. Wood?

A. Yes, I am acquainted with Wood.

Q. Mr. Wood arrived at Nome on the same steamer that you did?

A. Yes, he was on the "Senator" going up. You have asked me twice with reference to our being on the steamboat going up. I think I can explain how these people were on the same boat with us. I was in Seattle some days before they arrived there. We were going to take the very first boat out that we considered reliable or safe. The officials came out from the East somewhere—they did not come out with us. Nor did we understand they were going to Nome upon our boat. I think, perhaps, they decided to do so on the day we left there. They were waiting for a Revenue Cutter; they had instructions, so the marshal told me, to wait for the Revenue Cutter. Their going on the boat with us, as I considered it, was the merest sort of an accidental occurrence. What eventually induced them to change their mind and not wait, I do not know.

Q. When was it, as you recollect, that Mr. Chipps transferred his interest in the property to Mr. McKenzie?

A. He made a transfer to Mr. McKenzie in New York City, I think, of these properties I speak about. I do not

(Deposition of O. P. Hubbard.)

believe that in that conveyance, however, that this disputed property was included at all. Mr. Chipps and Mr. McKenzie had a good deal of business together when I was not present; their first agreement in New York City, I think, was made without my being present.

Q. I am speaking about afterwards.

A. I am just making an explanation. I think Mr. Chipps at that time had possibly entered into some sort of an agreement—what the instrument was I do not know, if any—about this disputed property. But the conveyance that I refer to is one that Chipps made of a number of other properties which he had and which were not disputed claims at all; there was no contest over them. It is my recollection, too, that he did make in New York City, possibly, a separate conveyance of the disputed property.

Q. To Mr. McKenzie?

A. I would not say now; that is my recollection, that he made either a written agreement of some kind or a conveyance—I am not certain.

Q. Was that agreement made to you?

A. No, sir, it was not made to me.

Q. This deed that was made to you as trustee, was that the property not connected with the disputed property?

A. It was the disputed property.

Q. When was that made?

A. As I say I cannot give the date. It is recorded. We had so much going on around there I would not at-

(Deposition of O. P. Hubbard.)

tempt to fix the date; I might miss it a month, and it might be very material in these matters here. The deed is of record, and shows for itself.

Q. Was it before or after the arrival of the writs of supersedeas? A. I could not tell.

Q. About that time?

A. I could not say whether before or after. The season is very short up there, and all these matters occurred within a period of two or three months, you know, and I did not get it until late in July.

Q. The agreement to which you refer as having been made in New York, that was in the summer of 1900 prior to your going to Nome? A. Yes.

Q. And during the year 1900?

A. Yes. I want to say that by some agreement between Mr. Chipps and Mr. McKenzie, I think, before that, it was surrendered to Mr. Chipps. That is, I am pretty confident it was.

Q. The paper was surrendered to him?

A. Yes. They had some understanding with reference to the fact—I think Mr. McKenzie—I do not want to tell what Mr. McKenzie said, as that would be hearsay, as I was not present when they talked; it is not proper evidence.

Q. At that time you were acting as attorney for Mr. McKenzie?

A. I do not know as you could say I was acting for Mr. McKenzie; I was in a way; I was assisting him in the organization of his company and in procuring properties.

(Deposition of O. P. Hubbard.)

I procured all together by purchase and by contract one hundred claims, and many of the parties who owned these claims I was personally acquainted with. I assisted Mr. McKenzie in getting the properties together. All these properties were not disputed properties; they were uncontested properties in Alaska.

Q. You were also attorney for Mr. Chipps after reaching Nome? A. Yes.

Q. And at the time you speak of you talked with Mr. Chipps about his making his conveyance and agreement?

A. I was not his attorney with reference to the agreements he made in New York with Mr. McKenzie. He was doing his own negotiating there; I had nothing to do with that. I drew some deeds there that he signed. I was not acting as his attorney in that matter.

Q. Do you know Marshal C. L. Vawter?

A. Yes, very well.

Q. Do you know anything about his being ordered by Judge Noyes not to allow Mr. McKenzie or any one else to take the gold-dust out of the boxes of the safe deposit vaults on or about the 15th day of September, 1900?

A. I only know what I heard about that; I only know from the testimony that you have already taken in these matters. I saw the guard in the vaults, but how they happened to be there, and who put them there I do not know except by outside hearsay.

Q. Did you hear up there that an order to that effect had been made?

A. I understood so—if you want me to state matters

(Deposition of O. P. Hubbard.)

of that kind; it is not testimony. As I understood and nearly every one there understood that Judge Noyes had taken such steps, or had done something that prevented Mr. McKenzie or anybody else from having access or taking possession of the gold-dust. Now, I take it that Judge Noyes' order—I do not know that he made any order except the stay order, and that would be the best evidence of what he did.

Q. That order was never filed, is not of record?

A. Well, the order staying proceedings was filed, I understand.

Q. September 17th that was filed?

A. This matter as to any order that Judge Noyes made affecting the possession of the dust in the vaults—any information that I have is mere hearsay.

Q. Do you recollect how you came to hear of it up there?

A. I suppose every man in town heard of it.

Q. Did you hear of it as attorney for the plaintiff?

A. No. As I stated this morning we were not directly concerned; we did not have anything in our possession. The parties did not have, if they had possession of the properties, possession of the gold-dust. So far as the writs were concerned it was merely formal, and they were served, I suppose.

Q. So far as the taking possession of the gold-dust was concerned they did not consult you in respect to it?

A. Not at all; why should they?

Q. It was an immaterial matter with them?

(Deposition of O. P. Hubbard.)

A. He had no more possession that I had when the receiver was in there. Until his dismissal or discharge the matter was beyond us, of course.

Q. Were you not concerned as to what the receiver did with the dust?

A. Why, certainly I was concerned, as an attorney always is in his client's matters.

Q. If an order had been made allowing him to take out the gold-dust, or prohibiting him from doing so, would it not seem likely that you would learn of it as a party to the action?

A. Certainly, I would be very apt to learn of it.

Q. Did you not learn of it at that time?

A. As I say, I have some information that came to me, I do not know how, that Judge Noyes had taken some steps or had done something to secure the possession of the gold-dust in the vaults at that time. There was some excitement about the bank, and the marshal and the military were put there, but under what instructions I cannot state, except what I have got from the evidence already taken here.

Q. Did you ever have any talk with Judge Noyes about that matter?

A. No, I did not talk with Judge Noyes about these matters. Senator Geary was attorney for the receiver, and I felt that he did not need any reinforcement from me. That would have been an interference on my part if I had gone.

Q. Did Mr. McKenzie or his attorney ever come to you

(Deposition of O. P. Hubbard.)

at that time, say September 14th or afterwards, asking your permission to take out that gold-dust?

A. No, sir, not at all. As I stated this morning, whenever they drew up these stipulations between the receiver's attorneys and the attorneys for the defendants, they brought them to me to sign them. I did not pay much attention to the stipulations because I felt that anything that the receiver's attorney was willing to do, and anything that the defendants wanted in the way of a stipulation, that we were willing to enter into it—that is, to sign the stipulations. I could not tell what they were now.

Q. At any rate there was no objection on your part?

A. No objection to these stipulations, no. That is my recollection about it. I do not recall that I ever objected to any stipulations that the attorneys for the defendants and the receiver's attorney presented to me for signing.

Q. Do you recollect of ever saying that you would object to any stipulation, if presented?

A. No, I do not recall ever having done that. Mr. McKenzie, the receiver, had given a bond for the possession of the gold-dust, and we were reasonably secure under that bond about the dust. While we were rather desirous that it should remain in Alaska until the suits were tried, still if the receiver's attorney and the attorneys for the defendant wanted it sent out for safety, we would not object to that.

Q. Now, if after September 14th Mr. McKenzie had desired to comply with the writs of supersedeas and had

(Deposition of O. P. Hubbard.)

complied with the specific directions contained therein to deliver the property to the defendants, there would have been no objection on your part to his doing so.

A. No, I do not think so. I do not see what right I would have had to interfere in the matter at all. When he was appointed as receiver he gave his bond, and he had a right to act as receiver, and the plaintiffs would have no right to go to objecting unless he was doing some very unwarranted thing, or something of that kind.

Q. There was no objection on your part, or on the part of any members of your firm, to his complying with the writs, or the orders contained therein.

A. I am certain there was not any further than I have already stated to you. There was some conversation about the fact that if the gold-dust was released illegally that we might look to Mr. McKenzie's bond for protection.

Q. If the writ of supersedeas directing him to do that was void?

A. I am not saying that. I am not putting it upon that ground. If as receiver Mr. McKenzie had released this gold-dust when he should not have released it, or had turned it over, I think the plaintiffs would have a right to look to Mr. McKenzie for protection.

Q. At that time had not Mr. McKenzie succeeded to the rights of the plaintiffs, especially to plaintiff Chipps?

A. No, I do not regard it so. It is a legal construction of the matter. I do not regard it so. It would cer-

(Deposition of O. P. Hubbard.)

tainly be a legal construction of the instrument to determine that.

Q. At the time this argument was made on October 6th before Judge Noyes for the restraining order in the case of Chipps vs. Lindeberg by Judge Dubose and Judge Geary, was the argument to the Court made in your hearing?

A. Well, you might say yes and no. I was not in the same room; I was in an adjoining room. There were several in there and I do not know but what we were talking. You say the argument made by Judge Dubose and Judge Geary. The argument was made by Mr. Metson.

Q. That was against the issuance of this order?

A. Yes. Judge Dubose did no more than to cite some authorities to the Court which had already been before the Court in other matters and been used in other arguments on this same proposition theretofore. I do not think that Judge Geary made any argument. Judge Geary, I think, was in the same room where I was, and somebody asked him a question about some decision that he had cited to the Court in some former case, and I think he merely stepped out of the room and spoke about that decision, or explained it in some way, stated the purport of the decsion. He did not make any argument.

Q. Did it seem to be a foregone conclusion that the Judge would grant the order?

A. I do not think so. I had no idea what the Judge would do in the matter.

(Deposition of O. P. Hubbard.)

Q. Was the purport of the argument that you heard to this effect: that the order appointing the receiver was not an appealable order, and therefore the action of Judge Morrow was void, and even if not void that the only writ of supersedeas that could issue would be a writ which would have the effect of stopping the proceedings as they existed when the writ was issued, and would allow the receiver to remain in possession of the property he had in his possession when the writ was issued?

A I would not attempt to tell what the argument was, because I was not taking any part in it; I did not make any preparation to take any part in it. I would not undertake to state Mr. Metson's argument on his side, or what Judge Dubose said, nor to state what the question was they were arguing that evening.

Q. Were not those questions of motion the questions at issue between the parties up there after the writ of supersedeas had reached Nome?

A. I think Mr. Metson made the entire argument and cited a great many authorities against the granting of a restraining order, and I think he possibly put it upon the ground to some extent that the writ that had been issued had taken the matter out of the jurisdiction of that court there, and that the Court did not have power to issue the writ. As I did not participate in the matter directly I could not testify as to the points the attorneys attempted to make.

(Deposition of O. P. Hubbard.)

Q. Was Mr. Joseph K. Wood interested in this litigation?

A. Not so far as I know. I do not see how he could have been.

Q. Was he not acting as a go-between there, a conveyor of information between Mr. McKenzie and Judge Noyes, if you know?

A. Of course, I do not know anything about it, and I cannot see any reason why he should have been; Judge Noyes was just as accessible to one man as he was to another. I do not know anything about it.

Q. Mr. Wood was very intimate, was he not, with Judge Noyes? A. They were friendly.

Q. Did they not room together?

A. I do not know about that. I did not room at the hotel, and I do not know what their relations were up there. I know this, that the houses were very much crowded, and the chances were that some of them had to occupy the same room. That is, when they first arrived there; afterwards I think Mr. McKenzie got rooms in another locality. I am confident that nobody roomed with him there; at least I never saw anybody about his rooms there.

Q. Mr. Wood had a room adjoining Judge Noyes?

A. I do not know where their rooms were situated. I went once to Judge Noyes' room, but at that time he had a room in the front part of the hotel; who was near him I do not know. These men were all strangers to me. I did not know them until I had an introduction

(Deposition of O. P. Hubbard.)

before they went up there. I mean Judge Noyes and Mr. Wood.

Q. That does not include Mr. McKenzie?

A. No. I knew Mr. McKenzie in New York along in the spring of last year.

Q. Do you recall any time after September 14th when you were present when Judges Noyes expressed an opinion as to the action of the Court here, or any of its orders?

A. No, I do not recall hearing Judges Noyes express any opinion about the matter at any time. In regard to these orders, after the arguments were over generally he would take the matter under advisement and within a day or two would probably render a decision by refusing to sign the order or by signing it, and that would be the extent of the matter so far as I recall it now.

Q. When did Judge Dubose come into the case as one of the attorneys for the plaintiffs?

A. Well, I would not try to fix the exact date, but it was some time shortly after the receiver was appointed, but whether it was one week or two weeks I would not say.

Q. Was he employed by each of the plaintiffs?

A. No, he was not employed by the plaintiffs. We had him come to our office and we explained the cases to him, and told him we would be glad to have him assist us as counsel in the case. We understood that he was a mining lawyer from a mining State, and as our practice had not been in a mining community, we

(Deposition of O. P. Hubbard.)

thought it would be a good thing to have some attorney more experienced in mining matters.

Q. Any suggestion from Mr. McKenzie that he should be employed?

A. I do not recall any suggestion or anything of that kind.

Q. Did not Mr. McKenzie suggest that Mr. Dubose be employed as counsel in the cases or in one of the cases?

A. If he ever made a suggestion of that kind to me I cannot recall it now.

Q. You are not prepared to say he did not?

A. No, I would not be positive either way about that I can not recall any such suggestion on his part. My recollection is that we considered two or three different men there before we determined to speak to Judge Dubose.

Q. Did he not after that act in some matters and advise Mr. McKenzie as Mr. McKenzie's attorney?

A. Never to my knowledge.

Q. Was there not some suggestion made that he could not act for the plaintiff and receiver at the same time and thereupon Mr. Geary was engaged as counsel?

A. If he ever acted as attorney for Mr. McKenzie as receiver, it was a matter that I did not know anything about. His office was in another part of the street and near where Mr. McKenzie had his office. If Mr. McKenzie ever called him in for a consultation or anything of that kind about receivership matters, I do not know it.

(Deposition of O. P. Hubbard.)

Q. You know that he did afterwards up to September 14th advise Mr. McKenzie not to obey the writ of supersedeas, and that he has since been found guilty of contempt of the orders of this Court?

A. No, I did not know that he had ever advised Mr. McKenzie not to obey the writ of supersedeas. I have heard that he has been found guilty of contempt here. My information is that he was found guilty of contempt for advising one Dr. Comptois not to obey the writ. That is hearsay with me.

O. P. HUBBARD.

Subscribed and sworn to before me this 5th day of June, 1901.

E. H. HEACOCK,

United States Commissioner at San Francisco, for the Northern District of California.

Commissioner's Certificate to Depositions of Archie K. Wheeler and O. P. Hubbard.

United States of America,
Northern District of California,
City and County of San Francisco. } ss.

I certify that, in pursuance of the orders of the Court aforesaid, made and entered in the above-entitled matters on the 20th day of May, 1901, certified copies of which orders are hereunto annexed, on the 29th day of May, 1901, at 2 o'clock P. M., and the 3d day of June, 1901, at 2 o'clock, P. M., before me, E. H. Heacock, United States Commissioner at San Francisco, State of

California, duly authorized by said orders "to take the testimony of such persons as may be produced before him by respective counsel," Archie K. Wheeler and O. P. Hubbard appeared at my office, room 87, in the United States Appraisers' Building in the city and county aforesaid, and F. D. Madison, Esq., appeared as amicus curiae in support of the orders to show cause aforesaid, and Thomas J. Geary, Esq., appeared in his own behalf, and the said witnesses being by me first duly cautioned and sworn to testify the whole truth, and being carefully examined, deposed and said as appears by their depositions hereunto annexed.

And I do further certify that said depositions were then and there taken down in shorthand writing by Clement Bennett, a competent stenographer and disinterested person, under my personal supervision, and was afterwards put into typewriting, and after they had been so put into typewriting, the said depositions were carefully read over by said witnesses, and sworn to and subscribed by them before me.

I further certify that I have retained the depositions in my possession until I now seal the same and return them to the clerk of the court aforesaid for which they were taken.

In testimony whereof, I have hereunto set my hand, at my office aforesaid, this 14th day of October, 1901.

E. H. HEACOCK,

United States Commissioner, at San Francisco, and Commissioner Designated by the Court Aforesaid for the Purpose of Taking Said Depositions.

At a stated term, to wit, the October term, A. D. 1901, of the United States Circuit Court of Appeals for the Ninth Circuit, held at the courtroom, in the city and county of San Francisco, on Monday, the seventh day of October, in the year of our Lord one thousand nine hundred and one. Present, The Honorable WILLIAM B. GILBERT, Circuit Judge; Honorable ERSKINE M. ROSS, Circuit Judge; Honorable WILLIAM W. MORROW, Circuit Judge.

In the Matter of ARTHUR H. NOYES. } No. 701.

In the Matter of THOMAS J. GEARY. } No. 702.

In the Matter of JOSEPH K. WOOD. No. 703.

In the Matter of C. A. S. FROST. } No. 744.

Order Uniting Matters and Referring to Commissioner.

It is ordered that the above-entitled matters, and each of them, be, and the same are hereby, referred to Honorable E. A. Heacock, United States Commissioner, for the Northern District of California, who is hereby expressly authorized to take the testimony of such persons as may be produced before him by respective counsel in said matters.

For the purpose of facilitating the taking of such testimony, it is ordered that the said matters be united, and that the testimony of each witness shall be given at the same time in each and all of said proceedings, and thereafter used in either, so far as the same may be applicable thereto, and that but one return be made thereof, it appearing to the satisfaction of the Court that the ends of justice will be subserved by so proceeding.

The taking of said testimony shall commence on Tuesday, October 8th, 1901, at eleven o'clock, A. M., at the chambers of said Commissioner, or so soon thereafter as the respective parties are prepared to proceed therewith, and shall continue until such testimony shall be sealed and returned to this Court, such return to be made immediately upon the close of the taking of said testimony.

Mr. E. S. Pillsbury, an attorney and counselor of this Court, is authorized and requested to appear on its behalf and examine said witnesses.

I hereby certify that the foregoing is a full, true, and correct copy of an original order made and entered in the within entitled cause.

Attest my hand and the seal of said United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, this 7th day of October, A. D. 1901.

[Seal] F. D. MONCKTON,
Clerk.

In the United States Circuit Court of Appeals, for the Ninth Circuit.

In the Matter of ARTHUR H. NOYES. } No. 701.

In the Matter of THOMAS J. GEARY. } No. 702.

In the Matter of JOSEPH K. WOOD. } No. 703.

In the Matter of C. A. S. FROST. } No. 744.

Testimony.

Thursday, October 17, 1901.

Before Hon. E. H. HEACOCK, United States Commissioner.

Appearances:

E. S. PILLSBURY, Esq., as Amicus Curiae in Support of the Order to Show Cause.

P. J. McLAUGHLIN, Esq., and FRANK J. HENEY, Esq., for Judge Arthur H. Noyes and C. A. S. Frost.

JAMES G. MAGUIRE, Esq., for Thomas J. Geary.

JOSEPH K. WOOD, Esq., in Propria Persona.

W. T. HUME, having been duly sworn, testified as follows:

Mr. PILLSBURY.—Q. Mr. Hume, what is your name, profession, and residence?

A. My name is Wilson T. Hume; profession, attorney at law; permanent residence, Portland Oregon. I have been residing in Nome, District of Alaska, since May, 1900, and during the summer of 1899.

Q. When did you go first to Nome?

A. I arrived in Nome first in the early part of July, 1899.

Q. You were there in 1900?

A. I was there during the summer of 1899, and arrived in Nome on the 14th day of June, 1900, and remained there until the 6th day of September, 1901.

Q. Were you engaged in the practice of law at Nome?

A. I was, yes, sir.

Q. Do you know the respondents here, Judge Noyes, Mr. Geary, Mr. Wood, and Mr. Frost? A. I do.

Q. State if you met them all at Nome,

A. I met them all at Nome.

Q. State when you first met Judge Noyes at Nome, if you remember.

A. The first time that I met Judge Noyes to speak to him was on the 23d day of July, 1900.

Q. Do you remember the day of the week?

A. It was on Monday.

Q. What was the nature of your business?

A. I called on Judge Noyes at the Golden Gate Hotel, presented to him an application for appointment of re-

(Testimony of W. T. Hume.)

ceiver or receivers in certain actions in ejectment that were to be commenced at that time concerning the right of possession to certain claims upon Anvil Creek, in Cape Nome Mining District. The cases involved Discovery Claim, No. 2 Below Discovery, No. 10 Above Discovery, and No. 1 on Nakkeli Gulch, a tributary of Anvil Creek.

Q. Do you remember the names of the plaintiffs?

A. On Discovery Claim, Robert Chipps was the plaintiff, vs. Jafet Lindeberg, John Brynpeson and Erick O. Lindblom; No. 2 Below Discovery was Henry Rodgers vs. William A. Kjellman; No. 3 Above Discovery—which I omitted before—I have forgotten the title to that; No. 10 Above Discovery was Melsing vs. Tornanses, and Nakkeli Gulch was Herbert Webster vs. Mickel Nakkeli.

Q. How many suits were there altogether?

A. There were five.

Q. State exactly what took place, if you please.

A. I arrived at the Golden Gate Hotel on the evening of Monday, the 23d day of July. Judge Noyes was sitting upon the front porch or stoop of the hotel. I introduced myself, and stated to the Judge that I had certain pleadings to be filed in some cases, and that I desired to make an application to him for the appointment of receivers. He invited me immediately to come upstairs to his room.

Q. Was this the first time you had met Judge Noyes in Nome?

A. The first time I had any conversation with him at

(Testimony of W. T. Hume.)

Nome. I had seen him before that. He had been pointed out to me as Judge Noyes, but I had not met him.

Q. Proceed.

A. We went up into his room—he opened the door to go into the room at the end of the hall, and excused himself from going in there on account of his wife, or some ladies, being in there, and he said, "We will go into Joe Wood's room." We stepped then to the door that opened on the side of the hall near to the entrance of his room, and he took a seat. I took a seat, and laid upon the bed the complaints and affidavits and motions for the appointment of receivers, and I think I had also the copies of the papers at that time, and stated to Judge Noyes that I had been unable to find the clerk of the court; he did not have any office, and I did not know him by sight, and I was unable to find him; so I had been unable up to that time to file the complaint and papers, and he said that Mr. Dickey, who was the deputy clerk, was up town somewhere, and would be back very shortly, and I could proceed. I then told him that the pleadings involved the possession of certain claims on Anvil Creek, and started to give the title of the causes. He asked me concerning the Chipps case, and I told him that was one of them on Discovery Claim, and proceeded to read the affidavit.

Q. Just state what he said. You say he asked you concerning it.

A. He asked me if I had the Chipps case. I told him yes, that was Discovery Claim. I picked up the papers

(Testimony of W. T. Hume.)

in the Chipps case, and started to read the affidavit of Robert Chipps, the plaintiff, and the application for a receiver. He stated it was unnecessary to read the affidavit, and asked me if I had the orders for the appointment of the receiver. I told him I had. He said, "Let me see your orders." I handed him the order in the Chipps case, and while he had that in his hand I examined the other paper, and procured the orders in the others; at the same time I stated to him I desired to recommend, for appoint ment as receiver, Alexander McKenzie. He stated he had known Mr. McKenzie a great many years, and that he thought he was a very good man, a capable man; being a stranger in the country, he would prefer to appoint some person that he was acquainted with, and that he thought Mr. McKenzie would be a very suitable man for appointment. He retired into his own room, procured a pen and ink, came back into the bedroom that was then occupied by Mr. Wood and Mr. Wheeler, and signed the orders. He told me I could leave the papers with him, and as soon as Mr. Dickey returned to the hotel they would be filed as of the date I had left them with him. He and I discussed the question as to the propriety of signing the orders prior to the beginning of the action, but he said they would be filed as of the time I presented them to him, to just leave them with him and he would take care of them. I took the orders and copies of the orders, copies of the pleadings, complaints and affidavits with me, and left the originals with Judge Noyes at that time.

(Testimony of W. T. Hume.)

Q. What examination did he make of the papers before signing these papers?

A. There was no particular examination that he made. The matter was very briefly gone through; that is, brief statement on my part. He asked me if the papers were all right, and I told him I believed they were, and there was no further examination. He signed the orders.

Q. Did he read the orders before signing them?

A. He glanced over the first order I handed to him. Whether he read it carefully, I could not say. The other orders were similar to the first order. I handed them to him. I could not tell the action of his mind, whether he read the typewriting. He did not read it aloud, and I did not read it aloud.

Q. About what time of day was this?

A. This was somewhere between half past five and six o'clock in the evening; in that neighborhood.

Q. Of the day you have mentioned?

A. Of Monday, the 23d day of July.

Q. 1900? A. 1900.

Q. How did you come to go to him upon that occasion? At whose instance, if anyone's?

Mr. McLAUGHLIN.—We object to that question as incompetent, irrelevant, immaterial, and in no way binding on Judge Noyes, and having no tendency to prove any of the allegations either of the affidavit, or any inferences or conclusions that might be drawn from it.

(Testimony of W. T. Hume.)

The COMMISSIONER.—Counsel understand that the Commissioner has no authority to rule on the objections. They will become part of the record, to be passed upon by the Court of Appeals later, and the witness will answer the question the same as though no objection was made.

Mr. McLAUGHLIN.—I understand; but as to the certification of questions, I did not know what the practice would be; whether the question objected to and supposed to be important might not be certified to at once.

The COMMISSIONER.—That would keep us probably certifying all the time. The practice is to place the objection of record, and the witness answer the question. At some future time it may be certified to the Court, but not during the examination.

Mr. McLAUGHLIN.—Such questions as may be deemed necessary, you may certify?

The COMMISSIONER—Not pending the examination of the witness.

Mr. McLAUGHLIN.—But after it is closed?

The COMMISSIONER.—Yes. It would be taking up all our time to go to the Court.

Mr. McLAUGHLIN.—The question is not certified during the examination unless the witness refuses to answer, and persists in his refusal?

The COMMISSIONER.—Then the rule provides for the certification. Even that may be deferred to some subsequent time.

(Testimony of W. T. Hume.)

Mr. PILLSBURY.—Q. Now, answer the question, Mr. Hume. Read the question, Mr. Reporter.

(The reporter reads the previous question as follows: "How did you come to go to him upon that occasion? At whose instance, if anyone's"?)

A. At the instance of Alexander McKenzie.

Q. State, if you please, what occurred, with reference to your going there, between yourself and Alexander McKenzie.

Mr. McLAUGHLIN.—We note the same objection to that question. We have no desire to incumber this record by objections to the same class of testimony, if we can avoid it in any way.

Mr. PILLSBURY.—It may be understood of record that all objections of a kindred character are reserved. As far as I am concerned, I have no objection, that on the hearing before the Court you may move to strike out any portion of the testimony, so as to facilitate the proceedings.

Mr. MAGUIRE.—That applies to all the respondents.

Mr. PILLSBURY.—To all the respondents. I do not desire the Court to consider any testimony that it may deem incompetent.

Mr. HENEY.—And object to any questions as well?

Mr. PILLSBURY.—Certainly. You can move to strike out any portion of the testimony.

(Testimony of W. T. Hume.)

Mr. MAGUIRE.—That would not go to the form. It would not stipulate that they might object to the form of the question?

Mr. PILLSBURY.—No.

Mr. McLAUGHLIN.—We understand that it does not go to the form of the question. It is the substance.

Mr. PILLSBURY.—It goes to the relevancy and admissibility of the testimony.

Mr. HENEY.—We may object to any question other than to the form.

Mr. PILLSBURY.—You can put it as broad as you please. When this matter is heard before the Court, you are at liberty to challenge any portion of the testimony as irrelevant and inadmissible for any purpose.

Mr. McLAUGHLIN.—Even although the question eliciting the testimony was not objected to.

Mr. PILLSBURY.—Yes, sir. I do not desire the Court to consider any testimony which under any circumstances they would not consider relevant or competent or admissible.

Q. Proceed, Mr. Hume. I will ask you preliminarily: Had you seen Mr. McKenzie at Nome prior to this occasion when these orders were signed?

A. I had seen Mr. McKenzie first at Nome, I think four days prior to the time of the signing of these orders, almost continually during that time up to the time of the signing of the orders.

Nos. 701, 702, 703 and 744.

IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE NINTH CIRCUIT.

IN THE MATTER OF ARTHUR H. NOYES.

IN THE MATTER OF THOMAS J. GEARY.

IN THE MATTER OF JOSEPH K. WOOD.

IN THE MATTER OF C. A. S. FROST.

VOL. II.

(Pages 257 to 512, inclusive.)

TRANSCRIPT OF PROCEEDINGS AND TESTIMONY.

The Filmer Brothers Co. Print, 424 Sansome St., S. F.

(Testimony of W. T. Hume.)

Q. Do you remember when he arrived at Nome, and when Judge Noyes arrived there?

A. They arrived on Thursday, the week prior to the signing of the orders. That, I think, would be the 19th day of July, 1900.

Q. How soon after the arrival of the steamer upon which they came did you see Mr. McKenzie?

A. I saw Mr. McKenzie on the same day that the steamer arrived, and I saw him continually from that time up to the time of the signing of the orders.

Q. Just state what took place which led to the presentation of those orders.

A. From the time that Mr. McKenzie arrived?

Q. Yes, from the first interview. Just relate it.

A. Mr. McKenzie came ashore, I think in the early part of the day—at any rate, of the day that he arrived; the particular time I could not state, for the reason that at that time of the year it was daylight nearly all the time, and I cannot regulate the hour by reason of it being night and day. He came to the office and sought an interview with myself and my partner, Mr. Beeman; Mr. Hubbard also was present, and stated that Judge Noyes was on board of the ship, and Mr. Wood, the district attorney, was there, and that he, Hubbard, had transferred to him his interest in the litigation involving the right of possession to the Anvil Creek mining claims, and that Hubbard had represented that Mr. Beeman and myself would do the same thing, would transfer to his company the contingent interest that we had in those claims.

Q. Which company was that?

(Testimony of W. T. Hume.)

A. The Alaska Gold Mining Company. I knew nothing about the company excepting what Mr. McKenzie told me, and that he controlled the Court and the officials.

Mr. McLAUGHLIN.—Q. (Interrupting.) What was that?

A. Mr. McKenzie represented to Mr. Beeman and myself that he had controlled the appointment of the Judge and district attorney, and that if we desired to have those cases heard, it was absolutely necessary for us to transfer our interests to his company, and receive in lieu of it stock, or certificates of stock, or something of that kind, and explained in detail that he had been to a great deal of expense and work in the procuring of the appointments of these officials through his friends, and that it was necessary that he should control that litigation, otherwise we would not have a hearing; that Mr. Lindeberg's friends were all at that time making a strenuous effort to procure the friendship of Judge Noyes and Mr. Wood away from him, and unless he could represent that he had got our interest then that Mr. Lindeberg and his associates would control the Court and the district attorney, and our clients would suffer by reason of our not agreeing to his proposition. At the same time he demanded that in order that they might reap the benefit of the litigation, that he should have one-quarter of the business of Hubbard, Beeman & Hume transferred to Mr. Joseph K. Wood, and that Mr. Wood should become a partner in the firm.

Mr. WOOD.—Before any testimony is offered against myself, I have a written objection that I should like to

(Testimony of W. T. Hume.)

present, and present it to the Court. If you can possibly permit the testimony of this witness to be reserved as far as it affects me, until the matter can be presented, I think it will simplify the hearing of the case.

Mr. PILLSBURY.—I have to put this testimony in as an entirety. The witness is here, and we have been waiting a good while.

Mr. McLAUGHLIN.—I think in justice I ought to state at this time that whilst there may be no remedy, it occurs to me that a gross injustice is being done to Judge Noyes by taking the testimony in this matter. I am not caviling or carping or criticising the manner of taking the testimony, realizing the necessity of grouping it as much as possible, and expediting the testimony; but it drags so many matters in here that in an ordinary proceeding would not be admissible under any circumstances, certainly not at this stage, that it seems to me to illustrate very forcibly the danger of taking this testimony all together, as it is being taken in this case, and something in the nature of a drag-net, that there seems to be no protection against. I simply desire to make that statement, particularly in view of the fact that the witness is a lawyer himself, and understanding as he must the competency of evidence, and seeing the willingness with which it is being given, all emphasizes in my judgment what would seem to be an injustice, unintentional I am sure, to Judge Noyes.

Mr. PILLSBURY.—In deference to the learned counsel, I wish to say here of record, Mr. Commissioner, that this

(Testimony of W. T. Hume.)

evidence is offered to show a combination between these parties, existing from the inception of this business, until the final resistance to the writ. I consider that, in order to show the true inwardness and spirit of the action of Judge Noyes and others at the time these writs were served, as illustrating the action that was taken on their part, I am entitled, and it is my duty, to show there was a community of interests between these parties from the start, and their action was prompted and done in pursuance of that community of interests. It seems to me that is entirely proper, in order to illustrate their action and show the intent with which they acted. If this testimony is unpleasant, I am not responsible for that, and I regret it exceedingly. I regret that any man who has been on the bench should be called to answer such testimony; but I have stated frankly what I consider my duty in the premises.

Mr. McLAUGHLIN.—I may state I appreciate very much the position in which counsel in this case is placed in presenting the testimony, and feel assured that he does, as any lawyer must, regret that such a charge is made in this way. At the same time, it does seem to me that if we were trying, for instance, a criminal case, that certainly it would not be claimed that this testimony was competent. If it were for conspiracy, the conspiracy would first have to be proved, and in a civil case the same rule would prevail.

(Testimony of W. T. Hume.)

Mr. PILLSBURY.—I am proceeding to prove the conspiracy, now. That is the very purpose of this testimony. That is the very point to which it is being directed.

Mr. McLAUGHLIN.—If that be the point to which this testimony is directed, it does seem to me that it is peculiarly objectionable on that standpoint, because it is proving facts that occurred before there is any attempt at all to prove anything approaching a conspiracy for any purpose.

Mr. PILLSBURY.—We think not. However, in justice to the gentleman, I have stated my purpose.

Mr. McLAUGHLIN.—I appreciate the situation.

The COMMISSIONER.—As the Commissioner has no authority, and it is agreed among counsel he has none, to rule on any question, while it is very proper that all objections go of record, it appears to the Commissioner it is a waste of time to argue any questions here, and it also incumbers the record, because the same argument could be made in the forum where there is judicial authority to decide the question, and we had better get along and take the testimony. I am only suggesting that. Proceed with the examination.

Mr. PILLSBURY.—Q. Now proceed, Mr. Hume.

A. (Continuing.) That in order to reap the benefit of the work he had done in Washington, it would be necessary that I should accept the appointment of deputy district attorney under Mr. Wood, and that Mr. Wood should occupy the adjoining office; that if that was satisfactory

(Testimony of W. T. Hume.)

to us, he would get Mr. Wood, who was on the street at that time, to come up into the office, as he feared that Mr. Braslin, who was representing Lindeberg, Brynteson, and their associates, had had Mr. Wood in their office, and would be able to get him to appoint Mr. Jackson or Mr. Daly deputy, and that he, McKenzie, then would lose the influence of the district attorney's office in these alien cases. After some discussion of the matter, Mr. Hubbard, Mr. Beaman and myself concluded to accept the proposition—after consultation.

Mr. McLAUGHLIN.—Q. After consultation with whom?

A. Mr. McKenzie, Mr. Hubbard, Mr. Beeman and myself discussed the question, and they brought arguments to bear with reference to our business, the condition we would be in unless we did acquiesce in Mr. McKenzie's proposition.

Mr. PILLSBURY.—Q. State any arguments that Mr. McKenzie used.

A. McKenzie produced the argument that he had—and Hubbard, who was familiar with his business, endorsed the proposition—that he had spent something over $60,000 in bringing about the result of having these appointments made, the Judge and district attorney, satisfactory to himself, and he had come from New York and organized this company on the assurance that Mr. Beeman and myself would acquiesce in whatever Hubbard had proposed, and that he had made his arrangements on the assumption that we would carry out our partner's repre-

(Testimony of W. T. Hume.)

sentation, that his scheme would fall through, and we would lose our business, and lose whatever prestige we had obtained there and whatever business we had, because we would thereby incur his enmity, as well as the enmity of the Court and the district attorney's office. So, as an ulterior resort, we agreed to Mr. McKenzie's proposition. He retired, and brought Mr. Wood to the room. I was introduced to Mr. Wood, and in the presence of Mr. Beeman and Mr. Hubbard, Mr. McKenzie stated to Mr. Wood substantially the conversation he had had with me and Mr. Beeman, the proposition he made then that Mr. Wood should become a member of the firm, and have a quarter interest in the firm, and that I should be appointed deputy, and that for the present it was not advisable that Mr. Wood's name should appear as a member of the firm, but that McKenzie, at the proper time, would suggest, when it was the proper time, for his name to appear. Then, after discussing the general situation, I think Mr. Wood left, and Mr. McKenzie took Mr. Beeman and myself into the back room of the office, we having three rooms in that place, and stated—the conversation was like this—he said, "I want to become a member of your firm also, and I want another quarter of your business." We did not understand that, and asked him "Why?" "Well," he said, "of course personally I don't want anything myself, but," he said, "this Judge is weak and vacillating and uncertain; I have had a great deal of trouble to hold him up; he has got no money; I have had to pay all the expenses, and he has got to have something out of it." "Now," he

(Testimony of W. T. Hume.)

said, "you have got to agree to this: You have got to give up half of your business; half will be enough for you three, but the other half I must control." Mr. Beeman and I refused to acquiesce in that proposition, and he argued with us a long time in the same line, that he had to persuade us to give up the first quarter. We finally told him we would not agree to that, we had worked pretty hard, and expected to work harder; that we had clients to represent, and did not care to do that. He said, "Think it over until to-morrow. This has got to be done, or you may just as well quit on your cases." Mr. Beeman and I took it under advisement, and discussed the matter considerably among ourselves, and finally concluded we had to do it, or else abandon our business in Nome, because we believe, as it was represented to us at the time, that Mr. McKenzie was a very strong politician, and a man of a great deal of means, had a large company, and that if he saw fit to crush us, he could do it, and we were given to understand by Mr. McKenzie, and Mr. Hubbard also, that unless we agreed to this proposition, Beeman and I would be crushed or driven out of business.

Mr. McLAUGHLIN.—Q. Did some one tell you that?

A. Mr. Hubbard and Mr. McKenzie.

J. Told you you would be crushed. Mr. Hubbard said that.

A. Yes, sir. He was in New York, and knew the people interested in this Alaska Gold Mining Company, and that unless we acquiesced in Mr. McKenzie's wishes, whatever they were, we might just as well quite business and

(Testimony of W. T. Hume.)

drop out. We were representing clients at that time whose interests were entrusted to us, and who were depending upon us to protect their interests; if their business was destroyed, or their interests were destroyed, we would be to blame for it, and Mr. McKenzie and Mr. Hubbard both insisted that the only way we could protect our clients was to agree to Mr. McKenzie's proposition. The next morning we met Mr. McKenzie.

Mr. PILLSBURY.—Q. That is, Friday morning?

A. Yes, sir, Friday morning. We met Mr. McKenzie in my office. He called Beeman and I to one side, and wanted to know what we had agreed to do. He repeated some of his arguments. We told him we would agree to it. He brought Mr. Wood into the front room, and Mr. Wood, Mr. Hubbard, Mr. Beeman and myself were present and discussed the situation, and it was understood then that Mr. McKenzie, whose name was to appear in the firm, was to receive one-quarter of the proceeds of the firm, to be used by him for purposes that he saw fit and necessary to carry on his plan of action in whatever mode he desired to use it.

Q. Did he mention any person?

A. He said, "This, of course, comes to me, and I shall use it as I see fit. It is not to be understood that I am paying this to Judge Noyes, or giving it to him. it is coming to me. I am the man you deal with." But he gave us to understand it was to be used for the benefit of the Judge. I drew the partnership agreement. He sat at the table, and at Mr. McKenzie's suggestion,

(Testimony of W. T. Hume.)

I wrote it myself, for the reason that we did not care to have the typewriters know anything about it, and he did not want any duplicates. One copy was drawn between O. P. Hubbard, E. R. Beeman, W. T. Hume, Alexander McKenzie, and Joseph K. Wood, a partnership agreement. And in the partnership agreement, aside from the usual provisions, it provided that Mr. Wood's name was not to appear in the firm.

Mr. McLAUGHLIN.—Q. Wait a moment, Mr. Hume. Of course, you know that if that agreement was in writing, you have no business to state it. It is volunteering things that you must know you should not.

A. I am not volunteering anything.

Mr. PILLSBURY.—Q. I will ask you right here, Mr. Hume, in reference to the suggestion, if you have that agreement? A. I have not.

Q. Or if you know what became of it?

A. I do not know what became of it. I was sick in the fall. It remained in the safe until I was taken down with typhoid-pneumonia. It was in the safe when I was taken to bed. I was sick until nearly the close of the season. After the close of navigation, on going through the safe, the agreement was gone. Mr. Hubbard was the only member of the firm who had access to the safe after the time I was taken sick, Mr. Beeman having left. He was the only person who could have taken it.

Q. Have you seen it since?

(Testimony of W. T. Hume.)

A. I have not seen it since, and don't know where it is now.

Q. Without going particularly into the contents of it, I will ask you whether that paper was signed?

A. The partnership agreement was signed by all of the parties named, sealed in an envelope, and placed in our safe in the office.

Q. What next occurred?

A. Immediately upon the signing of the agreement, Mr. McKenzie then said for us to get to work, to get all the stenographers we could, and begin to prepare the papers for the commencement of the actions on the different claims on Anvil Creek, that we were engaged in, as attorneys. Some of the cases had been begun in 1899, three I think, maybe four, but in one of the cases, not having copies of the papers, we begin it over again. That was the case of Webster vs. Nakkeli.

Q. How about the Chipps case?

A. The Chipps case was an original case. I had never heard of it until McKenzie and Hubbard came ashore at this time.

Q. Do you know if the plaintiff Chipps arrived at that time?

A. I think he did. I did not know Chipps until he came into the office after Mr. McKenzie had arrived. I believe he came on the same boat. We employed stenographers—three of them—and I commenced the work of dictating the complaints, leaving the affidavits largely to Hubbard to prepare and get the witnesses,

(Testimony of W. T. Hume.)

complaints, motions, orders appointing receivers, and so on. This was on Friday.

Q. Whether you used the usual force of your office, or called in extra help?

A. We employed three stenographers. We had only one up to that time.

Q. At whose suggestion were they employed?

A. At Mr. McKenzie's suggestion to get them out hurriedly, so as to expedite the work, we employed Miss Codding, and a Mrs. James, and a Miss Fritz. Miss Fritz had been working in the office prior to that time for Mr. Beeman and myself. We set aside all work, and proceeded immediately to begin to prepare the pleadings and papers to be filed in these cases. I worked with the stenographers continually in the office from then until the evening of Monday, the 23d. McKenzie was present most of the time, in and out, he and Chipps and the other witnesses, the men who made affidavits, clients most of them. On Monday, McKenzie was very anxious for me to get the papers ready. It was quite a job, and there was more or less delay and confusion about it. I think it was Monday afternoon that McKenzie had two wagons in front of the office, with five or six men waiting there. One wagon had been there from early in the morning, and two wagons during the afternoon, waiting to take the men who he was to appoint as keeper on the claims, out to the claims, and he hurried me a great deal in getting the papers ready, stating that Judge Noyes was waiting at the hotel to

(Testimony of W. T. Hume.)

sign the orders, and was very restless, and was getting tired of waiting for me, that I must hurry up. About five o'clock in the evening I got the papers in such shape that I believed, after examining them, they were all right for filing.

Q. You then presented them as you have stated?

A. I started out to hunt Dickey, and could not find him. McKenzie said it would be allright anyhow; to take them right to the Judge; that he understood it, and I would probably find Dickey there, or at any rate he would know where he was. I went up as I have stated.

Q. What did you do with these orders that were signed, or the copies?

A. I met McKenzie at the foot of the Kester Way, which leads up to the Golden Gate Hotel, and gave him the orders. I took the copies myself, and he insisted on my going in the wagon with him to see that the service was made, with the marshal, Mr. Allen. I went in the wagon with them out to the creeks, out to Anvil Creek, and on to the different claims except No. 2 Below.

Q. Do you know whether Mr. McKenzie took possession that night of any of those claims?

A. Mr. McKenzie took possession of Discovery Claim as soon as we arrived there. I could not tell the exact time, but it must have been near 8 o'clock. He was put into possession by Mr. Allen, and I think he left Mr. Cumberford there as his agent. We then went to No. 3 Above, where he put a layman in charge—I cannot

(Testimony of W. T. Hume.)

think of his name now—at any rate, we went to No. 3 Above and served the order upon the layman who had the lay, and was in charge of the claim, from Mr. Anderson. I think that was the case of Comptois vs. Anderson. He left a young man there whom he, McKenzie, had brought out, as a keeper to hold possession. We then went to No. 10 Above, arriving at No. 10 just as the night crew were eating their dinner, at 12 o'clock midnight, woke up Mr. Gabe Price, who had gone to bed, served him, and put Sam R. Calvin in possession of that claim. While Mr. Calvin and Mr. G. W. Price and Mr. McKenzie were checking up and talking the matter over, Allen and myself walked over the hill to No. 1 on Nakkeli Gulch, and served a Laplander who was there in possession, and from the best information we could get, he was claiming the possession—served him, and gave him copies of the papers and notified him to proceed to his lawyer and show them to him. We walked back, and Mr. Gabe Price, I think—Calvin was left in possession of No. 1; there was not much work there, as there was no water on the Gulch—we walked back, and Mr. Gabe Price rode back with us, leading his saddle horse until we arrived at Discovery Claim, or near to Discovery Claim. Arriving there, Mr. McKenzie sent his men over to No. 2, to take possession of No. 2, and he went over with the writ. We did not go over to No. 2 Below. We drove them home, arriving in Nome between 3 and 4 o'clock in the morning.

Q. That would be Tuesday morning?

A. Tuesday morning.

(Testimony of W. T. Hume.)

Q. Was anything said about bonds for these orders that were procured?

A. Mr. McKenzie attended to that entirely himself. I think he had some arrangement with a Mr. Wright, who represented a surety company, to give bonds. I had nothing to do with the bonds, and never saw them until afterwards.

Q. Was anything said about bonds in your interview with Judge Noyes?

A. I cannot recollect what was said about it. There was something said about it after the bonds were fixed by Judge Noyes. The amount of the bonds was left blank—I am not positive as to that, but I think it was. I am pretty well satisfied it was. As to the giving of the bonds, I had nothing to do with that.

Q. Whether those bonds were given before you delivered the writs to Mr. McKenzie?

A. They were not given to me. I never saw them. I do not know whether they were handed to the Judge before or after that, or when they were handed to him. I had nothing to do with the bonds.

Q. You said it was spoken of that you should be appointed deputy United States attorney for Mr. Wood?

A. Yes, sir.

Q. What, if anything, was done?

A. I was appointed that day.

Q. Which day was that?

A. I was appointed on that day. The written appointment, I think, was not filed for some days, one or

(Testimony of W. T. Hume.)

two days afterwards. I am not positive as to that, but the appointment was made out, and Mr. Daly was deputy district attorney under General Frederich in Southeastern Alaska, I think I took the appointment up to him and showed it to him. I would not fix the date, but it was right in that neighborhood, either Saturday or Tuesday; not Sunday or Monday; either Saturday or Tuesday.

Q. With reference to the day on which you say this partnership agreement was made: Was that appointment made before or afterwards?

A. It was made at the same time. I think it was signed shortly after that. It was drawn or dictated at the same time. I entered into the active control of the business in the Justice's Court immediately.

Q. Did you act as deputy United States attorney?

A. I did.

Q. For how long?

A. Until the middle of September, I think the 15th or 16th of September, when I resigned, or the 17th.

Q. Following.

A. September, 1900, when I resigned.

Q. What were the circumstances which led to your resigning?

A. There were a good many matters that occurred during the summer, especially in the month of September, which made our relations strained; the position was unsatisfactory to me, and I think my position there was unsatisfactory to Mr. Wood. The relations between the Court and Mr. McKenzie and Mr. Wood and myself

(Testimony of W. T. Hume.)

became to a certain extent strained in that my advice was not followed in certain matters, and I expressed my opinion, so I resigned rather than be further connected with the office.

Q. You say that Mr. McKenzie spoke of alien cases?

A. Yes, sir.

Q. What were those?

A. Those were known as the Laplander cases; claims that were located by Laplanders or Nakkeli Gulch, 10 and 11, and 2 Below, and Discovery Claim was located by Lindeberg, Brynteson and Lindblom. At that time we believed they were all three aliens. We have learned differently since then.

Q. You say that these writs were served late Monday night or Tuesday morning, which would be the 23d or 24th of July. What next occurred with reference to this litigation?

A. On Tuesday morning the defendants appeared by Mr. Metson and Judge Johnson, and I think Mr. Knight, although I am not certain, and moved to dissolve or set aside the order appointing the receivers. I was notified by Mr. McKenzie that they were in the courthouse making this motion, and that I had better go up and resist it. I appeared in the courtroom, and I think at the time I appeared Judge Noyes informed me that the matter had been postponed until some time in the afternoon, and in the afternoon we appeared there to argue these matters. I think the next day, or that same day, Judge Noyes informed me—I mean Mr. Mc-

(Testimony of W. T. Hume.)

Kenzie informed me, that Judge Noyes did not believe I was able to resist Mr. Metson, Mr. Johnson, and Mr. Knight; in other words, that I was not strong enough, and I had better get associate counsel to help me out, and that Judge Noyes had suggested Judge Dubose to assist me in resisting their motion, and I believe Mr. McKenzie employed Judge Dubose to assist me, in a day or so. He appeared in a day or so after that.

Q. What did McKenzie say about these proceedings, this motion? You say he asked you to appear there. What, if anything, did he say about the proceedings, or how they should be conducted?

A. I don't know that I quite understand you.

Q. Was any reference made to the Court or to the Judge?

A. Well, the statement was made that the Judge was not satisfied with my presentation of it, and thought I ought to have associate counsel to represent the company's end of it, the Alaska Gold Mining Company's interest in these cases, and that he suggested it would be satisfactory that Judge Dubose appear with me.

Q. You say he was employed?

A. He was employed by the Alaska Gold Mining Company, or Alexander McKenzie, to appear with me for the plaintiff. The matters was argued at divers times for some time, I have forgotten now. We had several arguments on the matter, and the Court took it under advisement.

Q. The motion was denied finally?

(Testimony of W. T. Hume.)

A. The motions were denied in the early part of August, about the 10th or 12th of August.

Q. There were second orders procured, were there not, concerning the receivership? A. Yes, sir.

Q. State what, if anything, you had to do with those.

A. Mr. Archie Wheeler, who was the secretary of Judge Noyes, came to my office with Mr. McKenzie one morning, and handed me a draft of an order which he told me Judge Noyes had asked him to produce, because the other order was not full enough; it did not include enough property; that the people on the claims had not surrendered everything to McKenzie, because the order was not broad enough, and he wanted me to prepare this other order to present to him. The order included the tents, tools, utensils, and so forth. The draft was either handed by me to my stenographer, or I dictated the draft to the stenographer that was handed to me by Mr. Wheeler. It was in typewriting, and interlined. That order was presented either by myself or by my partner to Judge Noyes and signed. I believe Mr. Magnus Norman, who was one of Mr. McKenzie's employees, was appointed special officer to take it out to the creek and deliver it to Cumberford, with directions to take possession of the tools, tents, and everything on the claim.

Q. Those are what are known as the second orders?

A. Yes, sir; the first order was not full enough.

Q. State if you had any talk with Judge Noyes concerning those second orders, or any interview with him.

A. I either had a talk with him at the time—as I

(Testimony of W. T. Hume.)

say, I do not know whether I presented them, or my partner, but either at the time I presented them, or immediately after they were presented, I had a talk with him, and stated to him that I had prepared these additional orders as suggested by Mr. Wheeler, and they were satisfactory, he stated, to him, that the orders were proper and correct, and he either signed them at that time, or else had signed them. It was immediately after. My partner and I were at the courthouse, and whether he handed them to him personally or not, it was one transaction, because we were right there at the time.

Q. After those orders to discharge the receiver were disposed of, was there any proceeding prior to the receipt of the first writs of supersedeas upon appeal, any special proceeding that you remember?

A. In the court?

Q. Yes, that is, in connection with those cases of receivership.

A. We sent an agent out to represent the Alaska Gold Mining Company; at least I did not; Mr. McKenzie did.

Q. How did that come to be done? Who was he? What were the circumstances?

A. At the time that I was served or had information that application was to be made to the Circuit Court of Appeals for a writ, as I supposed at the time, of prohibition or supersedeas, that was after Judge Noyes had refused the appeal, I was then in consultation with Judge

(Testimony of W. T. Hume.)

Dubose and Mr. McKenzie, and I think Mr. Wheeler. We were all discussing it in the office. There were so many conversations had that it is difficult for me to place just the persons present, because it was every day, and a great many times a day, that we were discussing these matters. I suggested that it was necessary to send some person out at the same time that these papers went out, to represent us before the Circuit Court of Appeals, and resist any application for supersedeas or writ of prohibition. That is what we thought was to be applied for.

Q. You say at the time those papers went out: What papers do you refer to?

A. The transcript of the record that was filed on the application for the supersedeas.

Q. Were you aware that those transcripts were being procured?

A. We were aware that they were being made from the office. Mr. Borchenius was the clerk, and Mr. Dickey informed us, I think, that Mr. Knight and Mr. Metson were making transcripts of the records and papers.

Q. State what, if anything, you said. You say you advised.

A. I advised them to send some person out. Mr. McKenzie concluded he could not send Hubbard, Beeman would not come, and he could not spare me. He then suggested that he would send James L. Galen, a brother in law, I believe, of Senator Carter of Montana, who was either interested with McKenzie or very friendly with McKenzie, and McKenzie stated he would take care of

(Testimony of W. T. Hume.)

the fight at this end of the line, down at San Francisco. I dictated a statement for Senator Carter, in duplicate, of the situation as it was at that time, on the record, and that these papers, we had been informed, had been sent out for the purpose of applying for some writ or process from the Circuit Court of Appeals, which would prevent the trial of these lawsuits in Nome, and that we thought it necessary that we should be represented, giving a detailed statement of the facts, one copy of which, with a letter to John A. Hall, the United States district attorney for Oregon, who had been a former partner of mine, was given to Mr. Galen, with instructions and a request to Mr. Hall that if Mr. Galen was delayed, to apply for time until Senator Carter could appear or send some person to appear for us, and one copy to Senator Carter. Mr. Galen left about the middle of August with these two statements, for the purpose of procuring attorneys to represent the plaintiffs or the Alaska Gold Mining Company and Mr. McKenzie in the resistance of the application to be made here for whatever process was applied for, and to get time to file affidavits, and so forth, if necessary. He returned later on, I have forgotten just when, some time in September, I believe. What occurred outside, I only know from hearsay.

Q. Did you have a consultation after he returned?

A. After he returned, we had a consultation, and I think we were all present then, I remember particularly the members of our firm were, and I think Mr. Stephens.

(Testimony of W. T. Hume.)

Q. I mean at which Mr. McKenzie was present and Mr. Galen.

A. Mr. McKenzie, Mr. Stephens, the Commissioner—we were all interested—and Galen reported to us that he had proceeded to Portland; that Mr. Hall was out of the city, and he was unable to meet him; he left his letter, and that he then proceeded to Montana, and presented the letter and document I had sent to an attorney in Montana who had been employed, or who had appeared for us, Mr. Gunn, I believe, from Montana. Whether he had seen Senator Carter or not, I could not say now. I do not remember what he reported with reference to that. At any rate, he had carried out his mission, and he had been represented, I think, in Seattle, in the resistance of the application that had been made; but the writ of supersedeas and order from the Circuit Court of Appeals had been made before they had procured any person to appear for us. I believe that the order had been made before Mr. Galen had been able to procure attorneys for us, and then there was a hearing had upon it at Seattle. That was the report, as I recollect, that he made to us.

Q. Were you at Nome at the time that the writs of supersedeas reached there in these cases which you have mentioned, in which appeals were taken?

A. In September, yes, sir.

Q. About the 14th or 15th of September?

A. About the middle of September.

(Testimony of W. T. Hume.)

Q. State if there was any consultation on that account, and if so, what it was and who were present?

A. There were several consultations. I remember two of them distinctly. One of them was in my office, and one of them in Mr. McKenzie's office. As to which was first in order, I do not recollect. There was one consultation in my office, when Mr. McKenzie brought down a writ that had been served upon him. At that consultation, I think Judge Dubose, Mr. Hubbard and myself were present, when Mr. McKenzie came in with the writ. Judge Dubose had not seen the writ at that time, and asked me to read it. While I was reading the writ, I think Judge Geary came in and Mr. Wood. We read the writ. At that time the only question that was discussed was whether or not it included the gold-dust. I don't believe any opinion was expressed at that time one way or the other, except to find out what the writ conveyed. The entire discussion, I do not remember. After that, either on the same day or it was on the day that Judge Johnson and Mr. Metson had notified McKenzie that he would have until 2 o'clock in the afternoon to turn over that gold-dust, or to give them an answer as to whether he was going to obey the writ or not, Mr. Hubbard came to the office and asked me to come up to McKenzie's office on Stedman avenue. I went up there, and Mr. Hubbard was there and Mr. McKenzie was there, and I think Mr. Wheeler; I am not positive. I am not positive as to all the persons present. Mr. McKenzie handed me the writ, and asked me what my opinion was about it. I read it

(Testimony of W. T. Hume.)

over, and then I was informed that there was an order—he stated to me, or some person stated to me, who was present, that the writ was broader than the order that Judge Morrow had made, and that Mr. McKenzie had been advised that it was void and could not be enforced, and he wanted to know what I thought about it. I told them all—they all seemed to be of the same opinion—that I had had very little time to look into it, in fact at that time I was pretty nearly sick, anyhow, and that if it was void or invalid, that they had probably to appear down here, and the best place to contest that would be in San Francisco. Mr. McKenzie informed me that they had arranged at that time, that the suggestion had been made and agreed upon, or was to be made, that Judge Noyes would issue an order upon him restraining him from turning over the gold-dust to any person, that is, that Judge Noyes had been in consultation, that they had been talking about it, and the suggestion had been made for him to make this order, or he had agreed to make this order.

Mr. McLAUGHLIN.—Q. At this point, I will ask you to state who made that suggestion, if anyone? Let us get at the name of the fellow who made it.

A. I say that Mr. McKenzie stated that to me. Mr. McKenzie stated to me at that time that they had been in consultation with reference to this writ, and that either Judge Noyes had agreed to make the order, or that they had discussed the question of having him make the

(Testimony of W. T. Hume.)

order restraining McKenzie from turning the gold-dust over. The theory, as Mr. McKenzie explained it, was, and I think he was the one who suggested it, that the Circuit Court of Appeals would have jurisdiction to order Judge Noyes, but no jurisdiction to order McKenzie, an officer of that court.

Mr. PILLSBURY.—Q. State the rest of the interview.

A. I will state that there were so many of those that it is difficult. I want to be careful, to be as accurate as possible, to remember, as there was nothing at that time to call upon me to fix definitely the identical words used. I have only impressions largely, excepting as to particular statements conveyed to me of the conversation.

Q. State whether or not you remember that Judge Noyes was mentioned in that connection.

A. I know that his name was mentioned in connection with the understanding; that is, the impression conveyed, as I say, from the trend of the conversation was that whatever—

Mr. HENEY.—(Interrupting.) I do not think the witness ought to encumber the record with impressions and understandings.

Mr. PILLSBURY.—Q. I ask you to state your best recollection.

Mr. McLAUGHLIN.—You do not ask him to state the impressions that might be conveyed, but if he can, what was said.

(Testimony of W. T. Hume.)

Mr. PILLSBURY.—I want the substance.

Mr. McLAUGHLIN.—We have not had a word that was said yet. I mean as to that particular thing.

Mr. PILLSBURY.—Q. State what you recollect, Mr. Hume.

A. I am trying to state that. I recollect that that conversation was had, as I have stated, with McKenzie and the persons present—that that statement was from Mr. McKenzie and the persons present.

Q. Did you have any talk wth Judge Noyes about this time?

A. There was a conversation had in Judge Noyes' chambers on Stedman avenue, when Mr. McKenzie was present.

Q. What was it?

A. We were discussing these writs, and at that time Judge Noyes stated that he did not know—I remember this distinctly—that he did not know Frank Monckton; who Frank Monckton was; that the writ was not signed by the Judge, but was signed by Frank Monckton. I stated at that time that Frank Monckton was the Clerk of the Court of Appeals, that I had his signature in my office, and there would be no trouble about identifying his signature, if he had signed the writ. The question was discussed at that time very briefly that the writ was void, and the Court had no jurisdiction to issue the writ in the form in which it was; that it exceeded the order made by Judge Morrow. I had no detailed conversation or discussion with Judge Noyes any more than this.

(Testimony of W. T. Hume.)

Q. What was the subject of the conversation in which this came out, as to whether the writs should be obeyed or disobeyed?

A. Well, the whole subject of discussion was how to avoid obedience to the writs. That was the purpose and the real reason of the discussion on all the occasions.

Q. How did Judge Noyes come to suggest this question about the clerk or the signature of the clerk?

A. That came up in conversation. It is difficult for me to state the identical words of all conversations. I remember that portion of the conversation as striking me as peculiar at the time. The question arose—the conversation was in the chambers there—

Q. In whose chambers?

A. In Judge Noyes' chambers on Stedman avenue. Mr. McKenzie was there.

Q. Was anyone present besides you and Mr. McKenzie on that occasion?

A. I could not say whether Mr. Wheeler was there or not. He generally was there. He was Judge Noyes' clerk and secretary, and was generally in that room. The question then was discussed as to the validity of this writ, and the opinion expressed that it was not valid. Judge Noyes expressed the opinion, as well as Mr. McKenzie, that the writ was a void writ; that they had been advised to that effect, and he was not compelled to obey it. Then, as I say, this remark was made by Judge Noyes, as I remember, that the writ was not signed by

(Testimony of W T. Hume.)

Judge Morrow, and he did not know who Frank Monckton was; he did not know whether he was clerk or not.

Q. At that time did Judge Noyes give any intimation as to whether he would or would not recognize the writ?

A. I don't think he said to me whether he would or would not. I think no conclusion had been arrived at at that time.

Q. Was there any conclusion reached subsequently?

A. That I could not state. I was taken sick very shortly after that—in fact, at that time I was sick. I was not present at the time the writs were resisted. I know there was a threat—Mr. McKenzie told me that Lane and Sam Knight, and I believe Metson, were going to take possesson of the bank, and take that gold-dust, and that he would get the marshal to protect him in holding the possession of the gold-dust. There was considerable alarm at that time on the part of McKenzie that they would take the gold-dust before action was had by the Court in reference to restraining McKenzie from delivering it over to them. McKenzie wanted an order to prevent him from delivering it to the defendants. That was, of course, the subject mostly of discussion, how to keep the defendants from getting the gold-dust, and what procedure was to be adopted.

(At this hour of 12:30 P. M., the Commissioner, with the consent of counsel, ordered a recess to be taken until 2 P. M.)

(Testimony of W T. Hume.)

Afternoon Session.

Present: The Commissioner, the official reporter, and counsel for the respective parties.

WILSON T. HUME, direct examination resumed.

The WITNESS.—I should like to state that during the noon recess I have recollected the name of the person that we served on the claim upon Discovery. I named it as 3 Above, but it was 2 Above Discovery, and the man's name was Dick McArthur. He was the layman under Anderson, I think, in the case of Comptois vs. Anderson.

Mr. PILLSBURY.—Q. I will ask you, Mr. Hume, if you gave any opinion, or made any suggestion, as to the course to be pursued concerning these first writs, at any time, I mean in the presence of Mr. McKenzie?

A. I gave no other opinion, excepting that whatever contest should be had, the proper place to have it would be in San Francisco, under the writs. I advised nothing else.

Mr. McLAUGHLIN.—May I be permitted to ask a question of the witness now?

Mr. PILLSBURY.—Certainly.

Mr. McLAUGHLIN.—Q. Was not that advice given by you, if given at all, after the opinion of the Circuit Court of Appeals in the case of the contempt proceedings against Alexander McKenzie, where the Court of Appeals substantially stated that such should have been done? Was it not after that that you gave that opinion, if you gave it at all?

(Testimony of W T. Hume.)

A. No, sir, I was not solicited for any opinion after that event. I have never seen the opinion of the Circuit Court of Appeals in the McKenzie case.

Q. When you gave that opinion, who was present? I do not remember now who you said, and I want to carry it along with me.

A. That statement was made—

Q. By you?

A. By me, at Mr. McKenzie's office on Stedman avenue, when Mr. McKenzie was present. I think Mr. Wood was there, and I think Archie Wheeler was there. I am not positive who the other parties were. Mr. Hubbard, I think, was there. It was at the time that Mr. Hubbard called me up from the office, to come to McKenzie's office, after Mr. Knight and Mr. Metson, or Mr. Metson and Mr. Johnson, had given him until 2 o'clock to obey the writ.

Mr. PILLSBURY.—Q. Do you remember whether Judge Geary was there upon that occasion?

A. I would not be positive as to that. There were several persons there, but I would not be positive.

Q. Did you make any expression of opinion or suggestion on your part?

A. No, sir, I made no suggestion as to what the procedure would be.

Q. As to whether you would or would not advise resistance to the writs.

A. The whole conversation was this: McKenzie asked me—he said, "Look at this." He handed it to me, and said, "What do you think of that"? I read it and said

(Testimony of W T. Hume.)

I did not see anything to do about the matter. He said, "I am advised that this is a void writ. Now, what do you think we had better do"? I said, "If it is a void writ, the only thing you can do is to go to San Francisco, present the matter there, and make your fight there, as far as I can see."

Mr. HENEY.—What is the purpose of this testimony. Is this witness cited for contempt also?

Mr. PILLSBURY.—No, not that I am aware.

Mr. HENEY.—I do not see what bearing it has on Judge Noyes.

Mr. PILLSBURY.—Q. With reference to the proceedings which you say were commenced and in which Mr. McKenzie was appointed receiver, were there any amended pleadings in those cases, and if so, under what circumstances were the pleadings amended?

A. The pleadings were amended. Mr. Wheeler—

Q. Who was Mr. Wheeler?

A. He was Judge Noyes' private secretary—came to my office—I think the defendants had filed a demurrer, or it had been argued, or a motion of some kind—and stated that Judge Noyes thought that my complaints were defective, and he had prepared a form of complaint which he wished I would follow. He brought me a draft of the complaint—

Mr. McLAUGHLIN.—Q. That who had prepared?

A. Judge Noyes and Mr. Wheeler. Mr. Wheeler brought me the draft of the complaint, and I prepared

(Testimony of W T. Hume.)

new complaints in each one of the cases, and took them to Judge Noyes, and told him I had prepared them in conformity with Mr. Wheeler's suggestion, and handed them to him for examination. He stated he would take them, look them over, and see if they were right. I never have seen the complaints since, and do not believe they were filed.

Q. You spoke this morning of putting in your resignation as deputy United States attorney. Was that done before or after, do you remember, the advent of the first writs on appeal from these cases?

A. That was done about the same time, after the writs arrived about the middle of September. I think the warrant for my pay ran to the 16th day of September.

Q. What was the date of your resignation, if you remember? A. The date of the warrant?

Q. September 16th.

A. The exact date of my resignation, I do not remember, but I drew pay up to the 16th of September.

Q. Was there any particular occurrence, or anything, any immediate consequence, which led to your resignation?

A. I simply asked Mr. Wood, that I wanted to see him and have an interview with him. We stepped into the front room. I told him the situation of affairs was not satisfactory to me, and that, in consideration of all the circumstances attending the condition of these writs, and these lawsuits, and matters that were being transacted at that time, I thought I had better resign, and the firm, the

(Testimony of W T. Hume.)

copartnership, we had formed had better be dissolved; that I did not care to longer be connected with the matter. He said, under the circumstances, he thought probably that was the best thing to do. I immediately wrote out my resignation, handed it to him, and it was accepted. There was nothing, as far as the office of district attorney, or the affairs in that office, were concerned, that had anything to do with the resignation.

Q. Whether Mr. Wood had been in consultation concerning this litigation? A. All the time.

Mr. McLAUGHLIN.—Q. Consultation with whom?

A. With myself, Mr. Hubbard, Mr. Geary, Mr. McKenzie, Judge Dubose, all of us, Mr. Wheeler, and Mr. R. N. Stephens.

Mr. PILLSBURY.—Q. Who was R. N. Stephens?

A. United States Commissioner at Nome he was, at that time.

Q. In regard to the obedience or disobedience of these first writs that came up about the middle of September, was Mr. Wood in any manner consulted, or did he participate in any consultation?

Mr. WOOD.—I think the witness has gone over that. He speaks about two consultations; one in his own office, and one in Mr. McKenzie's. While the Commissioner has no discretion in the matter of ruling, still I think you will adopt the suggestion made.

Mr. PILLSBURY.—Q. Are there any other than what you have stated, Mr. Hume?

(Testimony of W T. Hume.)

A. Those are the two that I participated in, although I know of others which I did not participate in.

Q. In regard to the proceedings generally, I mean resistance of the orders appointing the receivers, the general conduct of the litigation, whether or not he advised and was consulted.

A. Mr. Wood was consulted during the litigation in the preparation of orders, assisted in preparing some, and was also in consultation at the time of the arrival of these writs. At one consultation I was present, and others that I knew of when I was not present, and I know who were present.

Q. Were you there at the time of the receipt of the second writs, in the case that was appealed to the United States Circuit Court of Appeals, in which there was an order of arrest, and two deputy marshals were deputed to go there, serve the papers, and execute the writ?

A. I was there at that time.

Q. Did you have any talk with McKenzie at that time?

A. I did.

Q. What was it?

A. It was the day after Mr. McKenzie's arrest. He came to my office, and I think Mr. Hubbard was there. He inquired as to why I had not called to see him while he was in Judge Geary's office under arrest. I told him I had nothing to do with the matter, and did not care to be involved in it. He said, "Well, I want your advice as to what to do. I have got into this strait, and I want to know what you think is the best thing to do." I told him

(Testimony of W T. Hume.)

that there were only two things to do: One was to take a writ of habeas corpus, and the other was to go out under arrest and appear before the Circuit Court of Appeals. He said that Judge Geary had prepared a petition for habeas corpus that day or the day before, and submitted it to Judge Noyes in his office, and that Judge Noyes had turned it down and refused to grant the writ, and there was no use appealing to him to grant the writ; that Judge Noyes had gone back on him and would not help him any. I suggested that perhaps Stephens could issue the writ returnable to Judge Noyes. The probabilities were that that would force Judge Noyes to have a hearing. He said no, Judge Noyes had gone back on him and refused to do anything to help him, and he would go out with the officers. I said, "That is all you can do, then, to go out with them."

Q. Did you have any talk with Mr. Wood about that time?

A. I did on the day that Mr. McKenzie was arrested.

Q. What was it?

A. I met Mr. Wood on the street, near the Alaska Commercial Company's building, between that and the barracks—the square. He asked me why I did not go up and see McKenzie. I told him I did not care to go up there. He said he had just come from there, that he had got the keys of the vault from McKenzie, and that he was going to keep them, and that they would not get that gold-dust out of the vault, that he had the keys in his pocket.

Q. Was anything else said?

A. That is about all that was said that I recollect of now. It was a conversation in the street. I passed on

(Testimony of W T. Hume.)

and went to my office. He suggested the propriety of my going over to call on McKenzie in Judge Geary's office, but I did not go.

Q. Did Mr. McKenzie say anything to you about the keys, or who had them in possession?

A. Mr. McKenzie told me that Joe Wood had them. He told me how he came to the office the day after; that Wood had called him out of the office, had asked him for the keys, that he had given them to him, that Wood had them and was going to keep them, and that they could not get the gold-dust.

Q. Did you have any conversation with Judge Noyes about that time?

A. Not that I recollect of now.

Q. Did Mr. McKenzie say anything about the quarters that Judge Noyes would occupy, or about procuring them, or anything of that sort?

A. Yes, sir, he frequently spoke to me about that at the time he arrived.

Q. At the first interviews after the arrival—by the way, you say the steamer arrived on Thursday, and that Mr. McKenzie had an interview with you on that day. Do you remember when Judge Noyes came ashore?

A. He was pointed out to me on Saturday.

Q. That is when you first saw him?

A. That is the first time. He was pointed out to me as Judge Noyes. I did not meet him.

Q. Did Mr. McKenzie have anything to say about that?

A. Yes, sir; the day that Mr. McKenzie arrived, he

(Testimony of W T. Hume.)

told me that he had procured quarters at the Golden Gate Hotel for Mr. Wood and Judge Noyes; that he was paying all the bills, and had to keep up the establishment, paying all the bills at the hotel, railroad, steamship fares, and so forth, and told me frequently after that that he was doing the same thing; that he was paying the expenses of Judge Noyes, Mr. Wood, Archie Wheeler, and his nurse, and himself, at the hotel, the Golden Gate. On the day he arrived, quarters, I believe, were procured for Judge Noyes at the Lawrence Hotel by Mr. Braslin. Judge Noyes went to the Golden Gate Hotel.

Q. What communication, if any, as you learned from Mr. McKenzie, took place between Judge Noyes and Mr. McKenzie in connection with this business, these proceedings?

A. Mr. McKenzie told me frequently, almost daily, that he was in communication with Judge Noyes with reference to the procedure to be had in these cases, and the steps to be taken by the plaintiff's attorneys, as well as by the receiver's attorneys, and that he had great difficulty in holding Judge Noyes up so that he would not go back on him in the execution or signing of orders that they had agreed upon. He was considerably worried between the handling of the estate and keeping Judge Noyes, as he said, in line. That was the substance of his talk with me upon that subject.

Q. Now, in regard to claim No. 11 on Anvil Creek, on which Mr. McKenzie, you say, was appointed the receiver.

A. In regard to that claim, there was a mistake made. When we came to prepare the pleadings, we thought we

(Testimony of W T. Hume.)

had no person to verify the complaint, and the complaint was not filed, but Mr. McKenzie was appointed receiver, and I believe gave a bond. It was some time after that that it was discovered that in the case of Waterson and others against No. 11, that there had been a mistake in the preparation of the papers, and I think papers were not filed in No. 11; at any rate, nothing but an order appointing a receiver was filed in that case.

Q. Was any complaint ever filed?

A. Matters were in considerable confusion, and my recollection is there was not, but I have forgotten positively as to that.

Q. Now, before the receipt of the first writs about the middle of September, did you have any talks with Judge Noyes about these proceedings or in regard to these appeals that had been taken, and what might be done to defeat the appeals, or anything in reference to them?

A. He was familiar with the fact that we had sent Mr. Galen out to appear for us on the outside.

Q. Why do you say that he was familiar with that fact?

A. Mr. Galen had been appointed United States Commissioner at Council City. Captain Ferguson was placed in his place temporarily by Judge Noyes while Mr. Galen came outside to represent us and procure attorneys for us outside. I know the matter was discussed in Judge Noyes' room, in his presence, with reference to Galen going out. He had been appointed at that time and was ready to go to Council City, but Captain Ferguson was placed in his

(Testimony of W. T. Hume.)

place temporarily while he came out to represent us. It was understood that he came on that errand.

Q. Any other matters discussed by you, or in your hearing, with Judge Noyes, in regard to those appeals, or how they could be avoided?

A. Yes, sir; at the time of the giving of these amended pleadings to Judge Noyes, I suggested to him that I had consulted with Mr. McKenzie concerning the matter, and had his approval of dismissing all of the cases, and especially the Chipps case, which involved the Pioneer Company, and they were making the hardest fight; they seemed to have the most money, and were making the hardest fight against us, to abandon that case, and have Mr. McKenzie settle his accounts and begin the cases over again, and appoint separate receivers, and in that way avoid any —that is, to virtually confess the writs that had been applied for from the lower court, and avoid any further proceedings in that regard, and avoid the error we had dropped into before in issuing the papers before the receivers were appointed, and appoint the receivrs on a different theory. At that time the matter was taken under advisement by Judge Noyes, together with the amended pleadings that I had prepared and handed to him. There was never anything done. I never received any further advice from him, as nearly all my business was done through McKenzie.

Mr. McLAUGHLIN.—Will you let me fix the date?

Mr. PILLSBURY.—Certainly.

(Testimony of W T. Hume.)

The WITNESS.—That was about the latter part of August. The court met on the 22d of August. This was after the 22d of August, near the first of September.

Mr. McLAUGHLIN.—Q. Will you state the time and place when this conversation was had in which you say Judge Noyes appointed Captain Ferguson to take the place of the man Galen, who was to represent you? You say there was a conversation had with Judge Noyes, at which I understood you to say you were present?

A. Yes, sir.

Q. I want you to state the time and place, and who was present.

A. The conversation took place in Judge Noyes' office or private room, they were both adjoining, in Stedman avenue, and it was about the time that the papers were being sent out—the transcripts—along about the middle of August. Mr. McKenzie was there as usual. I would not say whether Mr. Wheeler was there. I think he was. He was generally there. It was not a matter of premeditation. I think Mr. McKenzie and I went from my office up there, because Galen had been appointed United States Commissioner for Council, and they went up to explain why he went outside and did not go to Council.

Q. I understand you, then, that you were there, McKenzie was there, and you think Wheeler was there?

A. I think Mr. Wheeler was there.

Q. Anybody else? A. And Judge Noyes.

Q. Anybody else?

A. I do not recollect of anybody else now.

(Testimony of W T. Hume.)

Q. You are sure, then, of yourself, McKenzie and Judge Noyes?

A. Yes, sir. The conversation as between us three. I did not pay much attention to who else was present.

Mr. PILLSBURY.—Q. State a little more definitely what the purpose of the suggestion was that McKenzie should resign and other receivers should be appointed; What would be accomplished by that?

A. That would clear up—

Mr. McLAUGHLIN.—(Interrupting.) I understood the question was to ask you to state what was said, and not what your notion was unexpressed. What was said?

A. What I said?

Q. Yes.

A. The reason that I advised it was to clear up fully and completely the first cases that were started, and to give a full account of the coin and dust that had been extracted, so as to clean up the litigation that had been erroneously started, where the errors had been committed. At that time I advised them the serious question was the appointing of the receiver before the filing of the papers. We thought we could avoid the error that had been committed, and start anew with new proceedings entirely.

Mr. PILLSBURY.—Q. And with reference to the appeals?

A. That would be a confession of the error alleged in the appeals as we understood it.

(Testimony of W T. Hume.)

Q. Did any question arise as to the time when those papers were filed with reference to the making of the order appointing McKenzie receiver—that is, on this Monday when you first obtained those orders? You say the orders were made before the papers were filed. Did any question come up afterwards about that between you and Judge Noyes?

A. Yes, sir; in the month of September, I think, prior to the arrival of the writs of supersedeas, Judge Noyes and myself discussed the question as to the point made by Mr. Knight in the bill of exceptions, that the papers had not been filed prior to the appointment of the receiver, and Judge Noyes stated to me that he had made an affidavit to the effect that the papers were handed to him in the office at Stedman avenue, in the presence of Mr. Dickey, or Mr. Dickey in the adjoining room, and that Mr. Dickey had received them there, and he had made the appointment, and asked me to make a similar affidavit, which I declined to do.

Mr. McLAUGHLIN.—Q. Fix the time and place, and who was present You say in September. You can give it a little more definitely than that.

A. It was a matter that I had no occasion to think that I would ever have reason to repeat or think of again. I went to the courtroom. I was there every morning, and I fixed it as near as possible to fix it. There were several days during the early part of September that we had a severe storm, and Judge Noyes did not hold court, and it was one of the mornings that it was done.

(Testimony of W T. Hume.)

Q. The court in Stedman avenue. This was in the courtroom, then, was it?

A. The courtroom was two small rooms about twelve by fourteen square. It was simply a temporary courtroom. We had no courthouse at that time.

Q. And who was present?

A. I would not undertake to say. I think no one was in the courtroom. I think Judge Noyes spoke to me about the matter in the little room that was supposed to be his private office. The doors were open, though. Whether Wheeler was there or not, I could not tell. The conversation lasted only a few minutes. I had been previously requested to sign the same affidavit by Mr. McKenzie, and declined to do it. I cannot fix the time any more definitely than that.

Mr. PILLSBURY.—Q. What, if anything, did Mr. McKenzie say in this conversation, in the presence of Judge Noyes, as to why Mr. Galen was sent out, or why he wanted Mr. Galen to go out?

A. He simply stated that we had consulted over the matter, and that it was necessary, in my opinion, that we have representation at the Circuit Court of Appeals, and that we had concluded to send Mr. Galen, as he was a son in law of Senator Carter, and Senator Carter would procure attorneys for us on the outside, and with the Judge's consent we would send out Mr. Galen, and it was understood that Mr. Galen would not lose the benefit of his appointment by going outside.

(Testimony of W T. Hume.)

Q. Anything said as to why you wanted to communicate with Senator Carter?

A. No, sir, except that Senator Carter would furnish the attorneys on the outside to look after the litigation before the Circuit Court of Appeals.

Q. Did Mr. McKenzie give any reason why Senator Carter would do that? A. No, sir.

Mr. McLAUGHLIN.—May I inquire at this time whether or not Senator Carter is charged here as being one of the conspirators, or whether it is proposed to connect Senator Carter at any time, in any manner, or in any way, with this investigation?

Mr. PILLSBURY.—We expect to show that Senator Carter had a brother in law, or a son in law, up there, and that he was there representing, as it was understood, Senator Carter's interests, and that was the reason why he was sent for when this anticipated trouble came. To that extent, we expect to show that Senator Carter cut some figure in this proceeding, in that.

Mr. McLAUGHLIN.—The only reason that causes me to make the suggestion is that I know, and you know, how easy it is to do something that may cast some reflection on some person with his hands tied, not present, no opportunity of being heard, and yet he may be injured.

Mr. PILLSBURY.—We shall avoid that as far as possible.

Mr. McLAUGHLIN.—And injured in a way by the press, though the press do not mean to.

(Testimony of W T. Hume.)

Mr. PILLSBURY.—Of course we know Mr. Galen was sent out for that purpose.

Mr. McLAUGHLIN.—I know you do not mean to do that.

Mr. PILLSBURY.—No, sir.

Mr. McLAUGHLIN.—You appreciate, I think, that a great injustice may be done in that way. It has been done, and is being done every day, and may be done in this case.

Mr. PILLSBURY.— Q. Was there any conference, to your knowledge, with Judge Noyes, as to any steps to be taken in connection with the marshal, Vawter, or Special Agent Frost, there, in regard to the enforcement of these writs?

A. I personally had no conversation with Judge Noyes upon that subject. All I know is hearsay.

Q. Did you have any talk with Mr. McKenzie upon that subject?

A. I know from Mr. McKenzie what he told me had been agreed upon to be done.

Q. What did he tell you?

A. That he was to receive, under the directions of the Judge, the assistance of the marshal, and to prevent the taking of the gold-dust, which was the enforcement of the writ, from the bank, and that would be under the direction of the Court. As far as Mr. Frost is concerned, I know nothing at all. I did not know that he had anything to do with it.

(Testimony of W T. Hume.)

Q. Do you remember whether there was anything said—I think you stated this morning there was some talk about an order being made on McKenzie restraining him from turning over the gold-dust?

A. That was the first conversation. I understood that was to be done, at the first or second conversation I had.

Q. With whom did you have that conversation?

A. I was informed by Mr. McKenzie that had been agreed upon to be the procedure.

Q. Agreed upon with whom?

A. Finally agreed upon with Judge Noyes, under the advice of the attorneys McKenzie had consulted with.

Q. Had you ever seen Judge Noyes before he arrived at Nome? A. I never had.

Q. Had you ever seen Mr. McKenzie? A. I had.

Q. Whereabouts? A. In New York City.

Q. How long before his arrival in Nome in July, 1900?

A. I had seen him in New York City in the early part of May, 1900.

Q. Did Mr. McKenzie have anything to say then with reference to business at Nome, or with reference to this business which you have related, which subsequently took place there?

Mr. McLAUGHLIN.—Q. Answer that yes or no.

A. Yes, sir.

Mr. PILLSBURY.—Q. State what it was.

Mr. McLAUGHLIN.—I should like to ask the witness a question, for information.

(Testimony of W T. Hume.)

Mr. PILLSBURY.—Certainly.

Mr. McLAUGHLIN.—Q. The conversation you are now about to relate, you say, was had with McKenzie in New York City in May, 1900? A. Yes, sir.

Q. Was Judge Noyes present? A. No, sir.

Q. None of the gentlemen in this hearing were present; that is, none of the gentlemen cited to show cause were present? A. No, sir.

Q. It was a conversation in May, 1900, between yourself and McKenzie? A. And Mr. Hubbard.

Q. And Mr. Hubbard, your own partner?

A. Yes, sir. I think his clerk was present.

Mr. PILLSBURY.—Q. State what that was, with reference to anything that was to be done at Nome, Alaska.

Mr. McLAUGHLIN.—I think the objection and agreement we have already covers that.

Mr. PILLSBURY.—Yes, sir, entirely.

Q. State it.

A. I met Mr. McKenzie in the Everett House, in his bedroom, and he stated to me that he had procured from Mr. Hubbard his interest in the litigation on Anvil Creek; that he had organized a very wealthy company, including many very noted and rich men throughout the United States, whose names he was unable to disclose to me at that time, and declined to; that he had friends in Congress; that his company controlled several hundred claims throughout the Nome district, and was going to

(Testimony of W T. Hume.)

work the beach and the claims in the Casadepoga and Council City districts; and that the Judge and the district attorney would be friendly to his company, and were persons we had no need to fear; that Mr. Hubbard would probably be district attorney, but that he could not tell me the name of the person who would be the Judge, but I could rest assured that he would be all right; that he would be named by Mr. McKenzie's friends, and would be a friend of his company; that they had large interests and influential friends behind them, and he wished me to understand the situation, that they would be friends of ours—friends of our firm.

Q. Did you see Mr. McKenzie in Washington about that time? A. I did not.

Q. Did you see any parties in Washington in reference to this business?

A. I saw Senator Carter and Senator Hansbrough in reference, not to this business, but in reference to the amendment to the Alaska Code.

Q. I mean with reference to this litigation.

A. No, sir.

Q. I will not press that, then. What, if anything, was said by Mr. McKenzie concerning the beach claims up there? I understand the United States district attorney's office was a necessary ally in regard to that?

A. Yes, sir.

Q. What was that? What was said in reference to those claims?

A. He said the United States attorney's office would

(Testimony of W T. Hume.)

be under his control, and he at that time was purchasing beach claims, had purchased several, and I happened to hold the title to one in line with those he had purchased. He purchased or entered into an agreement to purchase that claim of mine, or the one I represented; that they would be able, through the United States Commissioner and the district attorney, to keep the beach claims clear of snipers, or jumpers, as we called them. At that time Hubbard was slated, or he told me Hubbard would probably be the district attorney.

Q. This was in May, 1900, when you saw him in New York? A. The early part of May, 1900.

Cross-Examination.

Mr. McLAUGHLIN.—Q. This conversation with Mr. McKenzie in New York, in May, was before you had formed a copartnership with Mr. Hubbard and Mr. Somebody else, whoever he was, was it? A. No, sir.

Q. You had already formed the copartnership, had you? A. Yes, and no.

Q. Why yes and why no?

A. We had entered into an agreement in the fall of 1899 that on the arrival of the boats in the spring of 1900 we would enter into a joint business as partners; but we had agreed to form a partnership, to begin on the arrival of the first boat in 1900. Between the fall of 1899 and the first boat of 1899, we were not to participate in any joint profits or business.

Q. You had agreed to form a copartnership begin-

(Testimony of W T. Hume.)

ning with the first running of the boats from Seattle into Nome? A. Yes, sir.

Q. That was when? A. In the fall of 1899.

Q. Who composed the copartnership of which you were a member?

A. Mr. O. P. Hubbard, E. R. Beeman, and W. T. Hume.

Q. When Mr. McKenzie was telling you about the necessity of having the district attorney and the Commissioner, you understood he was speaking of your partner controlling these claims?

A. He informed me that probably Mr. Hubbard would be appointed, as he was using his efforts to have him appointed.

Q. And that was satisfactory to you?

A. Certainly.

Q. You proceeded shortly after that to Nome, did you? A. Yes, sir, soon after that.

Q. Getting there in June? A. Yes, sir.

Q. Of 1900? A. Yes, sir.

Q. You had been, as I understand it, there before, and practicing law?

A. I had been there. I guess you call it practicing law. That was the principal business I was trying to do.

Q. Were you engaged in the practice of law before you went to Nome? A. Yes, sir.

Q. In the State of Oregon? A. Yes, sir.

Q. At Portland? A. Yes, sir.

(Testimony of W T. Hume.)

Q. How long had you been engaged in practice there? A. Since 1884.

Q. And you came from where to that point? Were you born there?

A. I was born in California; Placerville, California.

Q. And went up to Portland?

A. I went from San Francisco to Portland.

Mr. GEARY.—Will you pardon me for interrupting? I would like to know if you will take long with your cross-examination?

Mr. McLAUGHLIN.—Not very long.

Mr. GEARY.—Because I have only a question or two that I should like to ask, so that I can get away, if you will permit me.

Mr. McLAUGHLIN.—Certainly.

Mr. GEARY.—Q. You testified this morning, Mr. Hume, as to the meeting in your office, that Wood and I came in together. Are you certain about that, at the time the writs arrived?

A. I don't know whether I used the word "together." I thought I said you and Wood came in later.

Q. This morning you said "together."

A. I meant to say that you and Wood came in later, I think either while I was reading the writ, or after I had read the writ, into the room.

Q. Do you now remember any conversation between yourself and myself at that time?

(Testimony of W T. Hume.)

A. I think you and I did not consult anything about it.

Q. Have you any recollection of my being present at any meeting that was held by Mr. McKenzie and Judge Noyes, with you, referred to in your direct testimony?

A. Not with Judge Noyes present.

Q. That is, I was not present at any of the meetings that you have recited in your direct testimony?

A. I think you were present at meetings in McKenzie's office when I was present, but you and I personally never consulted.

Q. And I was not present at any of the meetings you have referred to in your direct testimony?

A. I think not at any of those meetings.

Mr. PILLSBURY.—Now, we will finish up Mr. Geary's end of it.

Q. What was the meeting you referred to when you say that Mr. Geary was there?

A. I referred to the meetings in Mr. McKenzie's office on the day that Judge Johnson and Mr. Metson had requested Mr. McKenzie to give an answer by 2 o'clock. That was the only meeting I remember, and the meeting with Judge Noyes was when Judge Noyes and I were alone, or Mr. Wheeler might have been present, and Mr. McKenzie and I were present, and Wheeler may or may not have been present, I could not state.

Q. At that time, at that meeting in Mr. McKenzie's office, as to when he was to give an answer, whether he

(Testimony of W T. Hume.)

would obey the writs or not, were you present when he gave the answer to Mr. Metson? A. I was not.

Q. Do you know what conclusion Mr. McKenzie determined to reach?

A. I only know from what Mr. McKenzie told me that he had been advised that the writs were void, and that he was not required to obey him, and had so notified Johnson and Metson.

Q. When the second writs came at the time McKenzie was arrested, did you have any talk with Mr. Geary?

A. I did not. Mr. Geary and I were not on very friendly terms at that time.

Mr. GEARY.—Q. At the 2 o'clock meeting, McKenzie must have told you later in the day.

A. I was not present when he got them. It was the day upon which they gave him until 2 o'clock. When he answered them, I do not know.

Mr. McLAUGHLIN.—Q. Can you fix the date so that we will cover that point completely, where they were waiting for the answer of Mr. McKenzie, the receiver?

A. I think the writs arrived there on the 14th or 15th, either Friday or Saturday, but I could not tell whether it was Saturday or Monday.

Mr. PILLSBURY.—Q. About the time that the writs arrived there?

A. Yes, sir, the 15th or 17th of September. I don't think it was on Sunday. It was right at that time. There was nothing to cause me to fix the date. It was

(Testimony of W T. Hume.)

immediately after the arrival of the writs, or shortly after.

Mr. McLAUGHLIN.—Q. It might have been on Sunday, you think?

A. I could not say. We did business nights and Sundays all the time. It was daylight all the time. It did not make any difference what day of the week it was. We went ahead and did business. I could not say whether it was Saturday, Sunday, or Monday. It was immediately after the arrival of the writs.

Q. Was the copartnership formed between you and your partners in Portland, or formed in Nome?

A. Formed in Nome. The partnership agreement was drawn in Nome.

Q. When Mr. McKenzie told you that it was necessary to control the district attorney's office in connection with the beach claims, you saw nothing improper in that, did you? A. I did not.

Q. You considered that entirely proper?

A. Yes, sir. I would like to explain why.

Mr. PILLSBURY.—Make your explanation.

Mr. McLAUGHLIN.—Q. Oh, yes, make any explanation you want.

A. One of the officers of the army had created the impression throughout the camp that there was a sixty-foot strip along the beach, over every beach claim, which was entirely open to the public, and that no man could locate it. As a result of this, thousands of persons had camped upon persons' claims along the beach, and

(Testimony of W T. Hume.)

had worked them out, and we had been unable to get the protection of the United States Commissioner's court theretofore; being terrorized by the number, he refused to protect men's property and protect the possession of these claims. I felt if a district attorney was appointed who understood the situation, and would enforce the law to protect men in their rightful claims, that was a perfectly proper thing to do. It was not that he was to do an improper act, but simply to enforce the Alaska statute against jumpers on the beach claims. That is the reason I thought it was a perfectly proper thing to do.

Q. So far, there was nothing improper in the conversation that you had with McKenzie?

A. As far as I was concerned, there was not.

Q. Or as far as he was concerned?

A. Not from a political standpoint, no.

Q. Did he undertake to corrupt you in any way at that time? A. Corrupt me?

Q. Yes. A. No, sir.

Q. Then there was nothing improper at all?

A. He bought a claim that he did not pay for. That would not be improper, I suppose.

Q. You controlled a claim, and he had a contract to purchase it?

A. Yes, sir; and he took it, worked it, and did not pay for it; but that did not affect me personally.

Q. That happened afterwards? A. Yes, sir.

Q. You had practiced law some in Nome before that

(Testimony of W T. Hume.)

time, and when you went to Nome in 1900 were your partners there? A. Mr. Beeman was there.

Q. He had remained there?

A. He had remained during the winter. That was the reason of our peculiar contract.

Q. Did you and Mr. Hubbard arrive at the same time?

A. No, sir; Mr. Hubbard came with Mr. McKenzie and Judge Noyes.

Q. Were you there before that time?

A. I was there from the 14th day of June, 1900.

Q. Getting down to precisely the point where first, as I understand it, Mr. Wood, the district attorney, had a third interest—

A. (Interrupting.) A quarter interest.

Q. (Continuing)—in your partnership affairs, and then subsequently, as I understand it, Mr. McKenzie came into your office and had the talk with you about his being a member of the copartnership?

A. Yes, sir, an hour or so subsequently to the arrangement between Mr. Wood and ourselves.

Q. At any of these conversations was Judge Noyes present? A. He was not.

Q. Then Mr. McKenzie said he wanted a quarter interest? A. Yes, sir.

Q. In addition to the quarter he had already obtained for Mr. Wood? A. Yes, sir.

Q. He had obtained that quarter for Mr. Wood, had he? A. Yes, sir.

(Testimony of W T. Hume.)

Q. You had never seen Wood?

A. Not up to the time that I agreed to this arrangement.

Q. You did not even know whether he was a lawyer?

A I had been informed he was district attorney, and presumed he was a lawyer.

Q. You did know that Mr. McKenzie was not a lawyer? A. Yes, sir, I did.

Q. He said he must have a quarter interest, and of course you resisted slightly, I suppose?

A. We resisted until he fully explained the reason why he wanted it.

Q. I am getting to that. You resisted the imputation? A. Yes, sir.

Q. Then he explained to you, as I understand it—and Judge Noyes was not present at all—that the Judge was vacillating, and it was necessary to hold him in line, and so that interest that McKenzie was to have was for the benefit of Judge Noyes. That is the way I understood your testimony this morning.

A. That is the substance of it.

Q. And Judge Noyes, as you understood it, was to be the presiding Judge in that district?

A. Yes, sir.

Q. And, as you understood it, you were going to practice law before that Judge? A. Yes, sir.

Q. Very well. And he impressed on you the necessity of agreeing to that? A. Yes, sir.

Q. You consulted with your partners before you agreed? A. Mr. Beeman.

(Testimony of W T. Hume.)

Q. And you slept upon it, as I understand, or perhaps you did not sleep that night?

A. We consulted that evening about it.

Q. You advised Mr. McKenzie the next morning that you had acceded to it? A. Yes, sir.

Q. After that time you did practice law before Judge Noyes? A. Yes, sir.

Q. He was a partner of yours, as you understood it, was he not?

A. I understood we were compelled to accept him as a partner by Mr. McKenzie?

Q. That is not it.

Mr. PILLSBURY.—Let him answer in his own way.

Mr. McLAUGHLIN.—Q. Very well. Go ahead and answer. I beg pardon. I did not want to interrupt at all.

A. I have answered. I say I understood that, by reason of this arrangement, we were compelled to submit to Mr. McKenzie's plans and accept whatever he dictated.

Q. And you did? A. And we had to.

Q. And after that time you did practice law before the Court over which Judge Noyes presided?

A. Yes, sir.

Q. And your practice of the law was not confined to these particular mining cases involved in this record?

A. No, sir, but—

Q. (Interrupting.) You had other cases?

(Testimony of W T. Hume.)

A. Practically confined to this, until the close of navigation.

Q. You had other cases and other matters that required attention?

A. Yes, sir, there were other matters that were attended to, but nothing was practically done until the close of navigation, except in these matters.

Q. You saw nothing improper in that, did you?

A. I did.

Q. That was improper?

A. Improper? As far as McKenzie, Noyes, and Wood were concerned, I thought highly improper, but I submitted.

Q. So far as they were concerned?

A. I submitted because I had to.

Q. You thought you improperly submitted?

A. I did. I have had to submit to many matters improperly.

Q. You thought you would be censured for making any such agreement as you did?

A. I did not consider that question.

Q. You did not consider that disbarment proceedings might be initiated for an offense of that character, did you?

A. I did not consider that I was subjecting myself to disbarment proceedings, because I believed when a hearing would be had, and my position was thoroughly explained and understood, I would not be blamed.

Q. Have you made your position clear?

(Testimony of W. T. Hume.)

A. I do not know that I have.

Q. Have you said all that you could on the subject?

A. No, sir.

Q. Could you say some more? A. Yes, sir.

Q. Will you? A. To explain my position?

Q. Yes. I want your position thoroughly explained.

A. All right, I will explain: In 1899, on the opening of the season of 1899, Cape Nome mining district was under military control. Anvil Creek, for a large portion of that country, was staked by a few men in 1898, or the winter of 1898. Very little property was subject to location in the summer of 1899, and a large portion of this property, valuable property, was located by what was known as Laplanders, who were aliens, not citizens, and were unable to speak the English language. In the summer of 1899 several persons who had relocated properties that had been prior to that time located by Laplanders and aliens employed me as their attorney to attempt to maintain their rights as American citizens in their locations. I advised them that I believed the prior location was void, and their location valid. These questions and their interests became involved largely in local matters in Nome, and they relied upon me to protect their interests. Myself and others urged and assisted as far as we could an amendment to the mining laws providing that locations could not be made by aliens, and locations that had been made by aliens could be investigated by the Court in an action in the District Court, and clear away any doubt of the right of that Court to consider the ques-

(Testimony of W. T. Hume.)

tion of alienage in the trial of these cases. Mr. Hubbard, in 1899, had procured the assistance of an English company to assist us in litigating these cases, as our clients had no money and we had not the means to advance to assist them in trying these cases. When I met Mr. McKenzie in Washington, I was told by Mr. Hubbard and Mr. McKenzie that Mr. Hubbard had failed in his English enterprise, on account of the death of Mr. Gerling coming out in 1899, and that Mr. McKenzie, hearing of the situation, interviewed Mr. Hubbard, and had agreed to take up the matters as Mr. Gerling had, to advance the money to assist us in trying this litigation. That was all that I supposed the arrangement with Mr. McKenzie was until he came, and I supposed, when I left New York, excepting for the fact that he was using his influence to procure the appointment of a Judge and district attorney who would not be controlled by persons in the interest of those who represented the alien interests, that they would simply be not controlled by them, but would be friendly towards the American citizen side of the question. When they arrived in Nome, the proposition that was placed with me meant the desertion of my clients, and the absolute sacrifice of all the work we had been at for eighteen months, or the acquiescence in Mr. McKenzie's plan, which at that time I did not fully understand, but understood to the extent I have explained, and that was the question we debated, Mr. Beeman and I, whether we could afford to submit humbly to Mr. McKenzie and his methods, which we understood at that time meant giving

(Testimony of W. T. Hume.)

half the property, and attempting to save our clients, or whether we should abandon our clients and abandon the practice of the law, which he said we should have to do if we did not acquiesce. I believed, under all the circumstances, that we acted at that time as we thought best. I can see now perhaps I am subject to criticism for having done so. At the time, under all the circumstances, we believed we were under the wheels of a political machine that would grind us and our clients if we did not acquiesce in their demands, and we acquiesced.

Q. Your explanation is now as complete as you can give it in a hurried way?

A. Yes, sir. Of course, I am not giving all the details.

Q. But that is the substance of it?

A. It is a general outline.

Q. These aliens that you speak of in regard to prior locations, were the persons, as I understand it, against whom you commenced these several actions, and that you had contemplated bringing actions along that line and that character for some time?

A. Outside of Discovery claim, No. 2, No. 3 and No. 5, I think they were aliens. On Discovery Claim, I believe we alleged they were aliens, and believed it at the time.

Q. What I mean is, these actions that you brought, and where Mr. McKenzie was appointed receiver, were cases along the line you speak of now, in aid of the parties that you believed entitled, and rightfully entitled, to the claims?

(Testimony of W. T. Hume.)

A. Yes, sir; some of them had been begun in 1899.

Q. Do you know which of the actions involved here were commenced in 1899?

A. I don't know that I know which were involved here.

Q. You mentioned them a moment ago. You said Chipps vs. Lindeberg was an original action, commenced, not perhaps commenced, but the papers prepared and a receiver appointed on the 23d of July? A. Yes, sir.

Q. As to the other causes, and you mentioned them—

A. I can give them; I don't know how many are involved here.

Q. They were pending, as I understood it.

A. I think Webster vs. Nakkeli, Mordaunt vs. Holtberg, Wilson vs. Haglin, and Comptois vs. Anderson were begun in 1899, and my impression is that an action was was begun on No. 11 in 1899 of Watterson vs. Nakkeli, but I am not certain about that. I would not be positive.

Q. The five actions we have been speaking of would include Chipps vs. Lindeberg, and Mr. McKenzie was appointed receiver? A. Yes, sir.

Q. And all the actions, as I now understand it, had been commenced before that time, except Chipps vs. Lindeberg?

A. Chipps vs. Lindeberg and Rodgers vs. Kjellman had not been commenced, neither had Melsing vs. Tornanses.

Q. That is three? A. Yes, sir.

Q. That would leave two, then?

(Testimony of W. T. Hume.)

A. I have given you the list of cases begun in 1899. I may have misunderstood your question; is it the cases in which McKenzie was appointed receiver.

Q. That is what I am getting at.

A. There were only two began in 1899.

Q. Which two?

A. Webster vs. Nakkeli, and Comptois vs. Anderson. I think we filed an original complaint in Webster vs. Nakkeli. The original papers were in Sitka, and we had no copies, so we filed an original complaint in Webster vs. Nakkeli on the 23d of July.

Q. The two cases you have mentioned had been pending for some time in that court?

A. Yes, sir, they had been on the files in Sitka.

Q. And applications in the cases, as I understand it, had been made by you for the appointment of a receiver?

A. Application for a receiver in Comptois vs. Anderson had been made.

Q. To what court?

A. To Judge Johnson, in 1899.

Q. At Sitka? A. At Nome.

Q. And you say you considered it doubtful whether the Court, as then organized, had jurisdiction to try any questions involved in the cases? Did I understand you to say so?

A. I say, that was a question. Judge Johnson, in passing on the matter, in trying a case in 1899, where the question had come up, considered it doubtful whether he

(Testimony of W. T. Hume.)

could try the question of alienage. There seemed to be considerable dispute on that question.

Q. Do I understand you that the cases that were pending that you speak of were, by the act of Congress continued so that they could be tried in the court appointed under the act of Congress in June, 1900?

A. Yes, sir.

Q. The act itself continued the cases?

A. The act itself provided that the passage of the act should not affect any case pending in the courts. The cases pending should be turned into the different districts; we substituted pleadings.

Q. Now, returning for a moment: You say that a partnership agreement was drawn, and you gave it, without going into details of what it consisted, after the agreement with Mr. McKenzie, and was signed by whom?

A. Signed by myself, Mr. Hubbard, Mr. Beeman, Mr. Wood and Mr. McKenzie.

Q. Judge Noyes was not present?

A. He was not.

Q. And that paper has been lost?

A. I do not know what has become of it.

Q. It was in your possession?

A. It was in our safe, but I was sick four or five weeks in the hospital with typhoid-pneumonia, and a few days after I got out of the hospital they all left the country, and navigation closed. Searching through my safe to find it, or looking through the papers to see what was in the safe, I missed it. I do not know what became of it.

(Testimony of W. T. Hume.)

Q. Did you ever speak to Judge Noyes about the arrangement or provision you had made for him?

A. I did not.

Q. Did you ever suggest to him after that, directly or indirectly, that you had made some provision, or had been forced to make any provision, for him?

A. I did not, for the reason that I was informed by McKenzie that all matters pertaining to Judge Noyes, and all proceedings in that court in which I was interested, he attended to himself.

Q. Who attended to himself?

A. Mr. McKenzie; he controlled the entire litigation after he took charge of it.

Q. Then, as I understand you, it is a matter of fact you were a mere go-between. McKenzie was the man behind the throne, and you were a sort of clerk, carrying papers to your partner who was the Judge?

A. I simply submitted to McKenzie's dictation on every subject, as far as litigation was concerned.

Q. Have I stated your position severely, or have I stated it as you understood it?

A. You have not stated it severely, except in one view, and that is in presenting the matter to Judge Noyes; he and I had no personal conversation in reference to our joint interest. That was left entirely to McKenzie to handle.

Q. What I am getting at is this: You never directly or indirectly suggested to Judge Noyes you had been coerced into making any provision or taking anyone into copartnership?

(Testimony of W. T. Hume.)

A. I did not discuss the question with him.

Q. Did you ever suggest to Judge Noyes, either directly or indirectly, that you had even been forced to take Wood into the copartnership?

A. I say I did not discuss the question with Judge Noyes.

Q. So that, so far as you know, with a single exception that you say McKenzie told you so, you knew nothing about it?

A. As far as the relations between Judge Noyes and McKenzie, all I know is what McKenzie told me, and what I observed from the actions and conduct of Judge Noyes corroborating his statement.

Q. I will get to that. You have volunteered that.

A. I say that is all I know with reference to it.

Q. I want to shorten this cross-examination. You are a lawyer, and if you would not volunteer statements when I propound a question, but answer the questions, and if you have any explanations to make, make them. We would get along more quickly. A. Very well.

Q. So that all these statements you have spoken of in relation to Mr. McKenzie, and what McKenzie said about Judge Noyes and what anyone else said about Judge Noyes, is your only information on that subject; that is right?

A. With reference to Judge Noyes' relations—from Mr. McKenzie.

Q. That is correct, is it? A. Yes, sir.

(Testimony of W. T. Hume.)

Q. Did you pay Judge Noyes his share, as you understood it, of the profits of the copartnership?

A. There never was any division of profits of the copartnership on account of the service of the writs of supersedeas.

Q. There were no profits to divide?

A. There may have been, but there has never been any settlement among the partners. Mr. McKenzie was taken out under arrest, and the writs of supersedeas served, and the whole thing seemed to vanish.

Q. The copartnership, that is, yourself, Mr. Hubbard, and the other gentlemen you mentioned, took in the money, whatever you were paid? A. Yes, sir.

Q. You never divided it?

A. No, sir, there was never any division.

Q. You kept it and divided it among you three?

A. No, sir.

Q. Or did you keep it all??

A. That would take a long time to explain—the division.

Q. I do not want to go into details.

A. There never has been any division. The close of the season closed up the firm's accounts. There never has been any satisfactory settlement among the partners to the present time.

Q. Let me ask you another question before I pass to the next: In making a motion before Judge Noyes, whether it was for the appointment of a receiver or any other motion that you desired to make, or order that you

(Testimony of W. T. Hume.)

desired, you considered that you were simply going to your partner and requesting him to perform the service, did you? A. No, sir.

Q. You considered at that time that he was your partner, didn't you?

A. I expected to carry out my agreement under the contract.

Q. You thought he was your partner at that time?

A. I thought he anticipated getting a portion of the revenues of our office.

Q. Did you think that was for the purpose of bribing the Judge, corrupting him?

A. No, sir; McKenzie claimed that he controlled the Court, and this was part of his scheme; he had to keep things satisfactory with the Judge; he compelled us to give him that for that purpose. That is all there is to it.

Q. I am going to press you a little upon that.

A. Very well.

Q. Did you consider at that time, whether you considered Judge Noyes or not, that the money you were coerced out of, held up, so to speak, using the language of Nome in some regions, was for the purpose of corrupting the Court?

A. Not as far as I was concerned.

Q. So far as anybody was concerned, did you think they were going to corrupt Judge Noyes by giving him money?

A. I did not think that that money would corrupt Judge Noyes. I—

(Testimony of W. T. Hume.)

Q. (Interrupting.) Did you think —

Mr. PILLSBURY.—Do not interrupt hm. Let him finish his answer.

Mr. McLAUGHLIN.—I beg pardon. I want all he says.

A. I did not consider that any money derived from our firm was money to be used to corrupt Judge Noyes. The information I had from Mr. McKenzie, and the circumstances surrounding the whole transaction were such that I believed Judge Noyes was absolutely under the control of McKenzie, and it did not take this money to corrupt him. That was simply part of a stipend.

Q. You gathered that from what Mr. McKenzie told you himself? A. Yes, sir.

Q. That Judge Noyes was under his control?

A. Absolutely.

Q. Mr. McKenzie told you so?

A. McKenzie told me so, except his vacillating conduct when he had trouble with him, and from what I learned otherwise.

Q. Learned otherwise? A. Yes, sir.

Q. Learned otherwise? In your communication with Judge Noyes, or are we going to get what some one else said about Judge Noyes? A. No, sir.

Q. Or are we going to get something between you and Judge Noyes? A. Nothing but circumstances.

Q. Under your observation. A. Yes, sir.

Q. With yourself? A. Yes, sir.

Q. I am going to get at that by and by. You did not

(Testimony of W. T. Hume.)

believe that Judge Noyes needed to be corrupted at the time this partnership, or this partnership arrangement was made; is that right?

A. I do not know as I can answer that question directly.

Q. Will you answer this question directly: Did you, at any time, believe that Judge Noyes could be corrupted with money? I will put that question to you fairly and squarely?

A. If Mr. McKenzie told me the truth, yes.

Q. You saw Judge Noyes; you had observed him; you had seen him?

Mr. PILLSBURY.—Q. State what you observed; your own observation and conclusion.

Mr. McLAUGHLIN.—Q. I will ask you this question: You were there; did you believe that Judge Noyes could be corrupted by anyone?

A. I will answer it in this way, if you will permit me.

Q. Answer that question if you can, and I think you can answer it by yes or no. I should like to have you answer that question by yes or no. It is a plain question, and is worthy of a plain answer.

A. I can say yes, with an explanation.

Mr. PILLSBURY.—Q. Make your explanation.

Mr. McLAUGHLIN.—Q. Go on. You say he could be corrupted? A. Yes, sir.

Q. Now, your explanation.

A. From what Mr. McKenzie told me, that he had

(Testimony of W. T. Hume.)

paid Judge Noyes' expenses from Washington, and had contributed some $60,000 towards securing his appointment, and that of Mr. Wood, and that he had paid all of his expenses, and his family's, from Washington to Seattle, his steamboat fare, and that he had been compelled to furnish him money to live on, and for spending purposes in Nome, paying his hotel bills there, and that, by reason of this furnishing of this money, he controlled Judge Noyes, and from the fact also corroborating the statement that if I presented an argument on demurrer, motion, or otherwise in other cases outside of the Anvil Creek cases, I, very shortly after the argument, would be consulted by McKenzie, and would be told whether or not I would have that demurrer decided in my favor or decided against me, and that depended on whether McKenzie desired an interest in the property and I procured it for him; I concluded from those circumstances that Judge Noyes was corrupt.

Q. I see. Now, then, the entire foundation of your knowledge is based entirely, first, upon what McKenzie himself said? A. And matters that he told me.

Q. I understand. McKenzie himself told you so.

A. Excepting matters that have occurred recently.

Q. How recently?

A. During the month of August, 1901. I do not know whether you mean now or at that time.

Q. That is August of the present year?

A. Yes, sir.

Q. I have not got down to August of the present year,

(Testimony of W. T. Hume.)

but, with that single exception, it is entirely based on what McKenzie told you?

A. As far as money and pecuniary consideration, it is.

Q. Or anything else? A. No, sir.

Q. What else?

A. Personal friendship and influence; personal friendship to be used.

Q. Personal friendship might be used?

A. Yes, sir.

Q. And influence? A. Yes, sir.

Q. So that you think somebody might, on account of personal friendship, obtain a favor from Judge Noyes, or by reason of some influence that they possessed obtain a favor?

A. Not exactly a favor, but could obtain substantial results in litigation. I do not consider that a favor.

Q. You mean deciding a case?

A. I do not consider that a favor from the Judge.

Q. Will you give us the name of any case where you divided any property with Mr. McKenzie for the purpose of obtaining a favorable decision from Judge Noyes? You are now charging an offense, and I want you to give, with as much particularity as you can, the time, the name of the case, the particular piece of property, and as minutely as you can. A. Where I obtained—

Q. (Interrupting.) Where you paid for the purpose of obtaining from Judge Noyes a favorable decision. You know the case, if there be any, and you know the property you gave him, if there is any.

(Testimony of W. T. Hume.)

A. I will not say that I paid Mr. McKenzie any money, or any consideration, for the purpose or with the intent to corrupt Judge Noyes. I will answer the question in this way: That in the case of Requa vs. Lindeberg, and Jacobs vs. Brynteson, on an application for the appointment of a receiver, I was informed by Mr. McKenzie that the receiver in that case would not be appointed unless myself and my clients turned over our interests in those properties to his Alaska Gold Mining Company, and if we refused, that the application for a receiver would not be granted. If we consented to it, the application for a receiver would receive favorable consideration at Judge Noyes' hands, and he would be appointed, which he was.

Q. What did you give in that case? What did you do?

A. We had contracts with Mrs. Requa and Mr. Jacobs for a contingent interest in the litigation, they being poor, and not being able to carry it on or pay us a cash retainer, for two claims on Dexter Creek. They had relocated the claims, and our interest under the contract was a quarter in case of success. These matters were explained to Mrs. Requa and Mr. Jacobs, and Mr. McKenzie himself obtained, through Mr. Hubbard's influence, trust deeds from Mrs. Requa and Mr. Jacobs of this property, and as soon as these matters were satisfactorily settled, and we gave up all of our interest in the matter, it went just like the other cases, the receiver was appointed, and he took charge of the litigation.

(Testimony of W. T. Hume.)

Mr. PILLSBURY.—Q. You say "he"—McKenzie?

A. McKenzie took charge of the litigation from that time on.

Mr. McLAUGHLIN.—Q. You were ousted?

A. We were nominally attorneys for the plaintiff.

Q. Without compensation?

A. We never received any compensation.

Q. Did anyone else ever receive any?

A. I don't know just what occurred in those cases. Something took place in 1900 and 1901 with reference to that litigation, between McKenzie and Hubbard and the defendants, but whatever it was, I do not know. I was inside at that time.

Q. You are familiar with the case that you speak of and its merits? A. Yes, sir.

Q. Was it, in your judgment, a proper case for the appointment of a receiver? A. Yes, sir.

Q. It would have been an abuse of the discretion of the Court to refuse to appoint a receiver? You considered it so, did you?

A. No, sir, I considered it was a proper thing to appoint a receiver in the manner in which it was applied for. The receiver that was appointed was not appointed in a manner which, according to my view, was proper. The refusal to appoint a receiver would, of course, have injured the plaintiffs' case if they had been allowed to try their case.

Q. But as the papers were prepared by you, it was an

(Testimony of W. T. Hume.)

eminently proper case for the appointment of a receiver, as you understood it?

A. I thought so, or I would not have asked for it.

Q. And a receiver was appointed? A. Yes, sir.

Q. From that circumstance, you drew the fact that Judge Noyes was corrupt? A. No, sir.

Q. Then you drew it from what McKenzie told you?

A. Yes, sir.

Q. You are building up and making this attack on the character of Judge Noyes entirely on what McKenzie told you, and you are a lawyer? A. No, I am not.

Q. Give us one fact.

A. I say, what McKenzie told was all he told me on the subject, but it was corroborated.

Q. I am getting at your observation.

A. His statements were corroborated by the ruling of the Court.

Q. Is that one corroboration? A. Yes, sir.

Q. Give me another of what you call corroboration. I want all the corroborations.

A. The corroboration of McKenzie?

Q. Yes; corroborating what McKenzie stated, as you say, from your own observation.

Mr. PILLSBURY.—Q. State anything that occurred before Judge Noyes that corroborated this opinion. Refer to the Topkuk, or anything.

Mr. McLAUGHLIN.—Q. This is wide open. I do not care what it is.

A. I began an intervention in a class involving No. 2

(Testimony of W. T. Hume.)

on Crooked Creek, Council City district. I did not file an application for a receiver at first, but finally did. At that time I was told by Mr. McKenzie—

Q. Please do not state any more things about what you were told by Mr. McKenzie. I want your personal observations.

A. At that time McKenzie's observations were corroborated by the appointment of a receiver in that case.

Mr. PILLSBURY.—Q. Tell us what he said. Give us the statement.

A. He (alluding to Mr. McLaughlin) told me not to state it.

Mr. McLAUGHLIN.—Q. I thought you were going back.

A. Mr. McKenzie stated in that case that if he was given an interest in the intervenor's rights in that property that he would see that we won the case, and I had no interest. I was working for a cash fee in that case. My client was sent for by McKenzie, and made the same statement to him, and he arranged with McKenzie to take McKenzie in as partner in the litigation.

Q. Your client did?

A. Yes, sir, and took him in as a partner in the litigation. Steps were immediately taken by McKenzie, and a receiver was appointed in that case, who still, I believe, is in charge of the property. I was taken sick at about the time this appointment was made, and had no further interest in it, except I know that the deal for the receiver

(Testimony of W. T. Hume.)

was made between my client and McKenzie. I was informed by my client of that fact.

Q. Who was the client in that case?

A. Dick Watson.

Q. Who was the defendant?

A. We were intervenors.

Q. You were the attorney for the intervenors?

A. Yes, sir.

Q. What was the case?

A. The case was a case of the Leo & Libra Mining Company vs. The Alaska Exploration Company. Mr. Frame was attorney for the Alaska Exploration Company, and Mr. Halsted and Gordon Hall were attorneys for the Leo and Libra Mining Company.

Q. As you say, you were the attorney for the intervenors in the case?

A. I was attorney for Mr. Watson, who was interested with Swanson and Jenson. Swanson and Jenson were the intervenors with Mr. Watson. They were interested with Mr' Watson.

Q. In that case, as I understand, the receiver was appointed?

A. Yes, sir, pursuant to the arrangement between Mr. Watson and Mr. McKenzie.

Q. Did the Court have anything to do with the appointment of that receiver, or did McKenzie appoint him?

A. McKenzie told Watson who would be appointed receiver, and he was appointed.

Q. Were you present when he told Watson?

A. I do not know whether I was or not.

(Testimony of W. T. Hume.)

Q. Did you volunteer that statement for the purpose of blackening character, without knowing whether it was true or not? A. I know it was true.

Q. Were you present?

A. I say I do not know whether I was present at the time he told Watson.

Q. Still you say that he did say so, and told Watson so, and you do not know whether you were present or not?

A. I say I do not know whether I was present when McKenzie told Watson. McKenzie told me that.

Q. I was not asking about what McKenzie told you.

A. I was talking the matter over with all three. To say I was personally present when McKenzie told Watson, I could not.

Mr. PILLSBURY.—Q. What did McKenzie say?

A. He told me that arrangement had been made with Watson, and the receiver—

Mr. McLAUGHLIN.—Q. (Interrupting.) What arrangement had been made with Watson?

A. That the receiver was to be appointed. He told me so in advance of the appointment.

Q. Who did he tell you would be appointed?

A. Denny Brogan.

Q. Could you give us the time or place when this statement was made, and who was present? Was Watson present?

A. At the time Mr. McKenzie told me that?

Q. Yes, or was it one of these private conversations between yourself and McKenzie?

(Testimony of W. T. Hume.)

A. I say I cannot recollect. Mr. Watson and Mr. McKenzie and myself had several conversations about it, and for me to state definitely that that particular statement was made by McKenzie to Watson, I would not undertake to fix it, because I had no reason at the time to fix in my mind just the words we used while each person was present.

Q. When was it, do you recollect?

A. That was some time, I think, between the 15th and 22d of September. It was in that week, I think. The reason I fix it is, it was just prior to the time I was taken sick. The appointment may have been made the day I was taken down, or the day after. I know it was just after that. I was taken sick on the 22d of September.

Q. You think it was between the 15th and the 22d of September, 1900?

A. Yes, sir, along in there.

Q. Did that interfere with your further representing your clients in that particular case, or did you continue to represent your clients after this arrangement was made in bringing in McKenzie?

A. I represented my clients. I had nothing to do with the receiver. The case had been settled, I think.

Q. You believed, of course, that the Court was being corrupted in your favor in that case, a little in your direction, did you? A. Not in my favor, no.

Q. You needed a receiver, didn't you?

A. That was McKenzie's idea, to get a receiver. I do

(Testimony of W. T. Hume.)

not think it was corrupt as far as I was concerned. I applied for a receiver, and it was a benefit to my client. He was not doing anything to favor me.

Q. You wanted a receiver in that case?

A. My client desired a receiver in that case.

Q. Did you?

A. It was immaterial to me, as far as I was personally concerned. I was representing the interest of my client, the best I could.

Q. Honestly and conscientiously, as a lawyer should? Did you desire the appointment of a receiver or not?

A. I did, in the interest of my client.

Q. You requested the appointment of a receiver?

A. I filed an application for that.

Q. It was a proper case in which a receiver should be appointed, was it? A. I believed so.

Q. And the Court in a proper case appointed a receiver, and you cite that as one of the cases that came under your observation?

A. The action of the Court in appointing the receiver is not the matter that I consider or weigh in making my opinion from the standpoint that you take.

Q. Did you in open court, in that case, suggest to the Court the name of the receiver who should be appointed?

A. I could not say whether I did or not.

Q. Will you say that you did not?

A. I would not be positive about that. I would not say whether I did or did not.

Q. Now, that is another instance of the Court, in a

(Testimony of W. T. Hume.)

proper case, appointing a receiver, and that, coupled together with the statement of Mr. McKenzie, you deemed sufficient to cast this statement that you make broadcast. Go on, and give us one more.

A. The appointment of a receiver in the Topkuk case.

Q. Go on and tell us all about that.

A. I can only tell you what I observed.

Q. That is all I ask.

Mr. PILLSBURY.—Q. Anything that Mr. McKenzie told you.

Mr. McLAUGHLIN.—Q. In connection with it, if it bears on the observation, yes.

A I heard the trial of the case. I was not a party or interested in it in any manner.

Q. You were not attorney in this case?

A. I was not. I observed it, and incidentally learned from McKenzie with reference to the matter.

Mr. PILLSBURY.—Q. What did he tell you?

A. He told me with reference to the receipt of money from that claim, that this man Cameron who was appointed receiver, was his friend, and McCormick was his agent, who was superintendent of the mine, and McKenzie told me he had sold his machinery to Cameron for $27,000, to be used upon this claim, and that Cameron was bringing the money up to pay him for this machinery, machinery that he had had working on my claim belonging to the Alaska Gold Mining Company.

Q. What, if anything, did he tell you about getting a receiver appointed?

(Testimony of W. T. Hume.)

A. I don't know that I learned that from McKenzie himself. I did not learn that from McKenzie.

Q. What did you observe about the case, and the management and conduct of it?

Mr. McLAUGHLIN.—Q. Give us your observation of it, and your means of observation?

A. The claim was worked. I heard the testimony on the trial of the case, and also talked with many persons who knew facts concerning the working.

Q. I don't think we care to go into that. I am speaking of your observation, not of the testimony. You cannot observed testimony very well, but your observation of the conduct of the Judge as applied to a statement made to you by McKenzie at a particular time. McKenzie did not tell you anything about that case at all, as I understand it?

A. We talked it over, not as applied to Judge Noyes—I do not want to testify to anything he told me that did not apply to Judge Noyes.

Mr. PILLSBURY.—Q. Anything he told you about the Topkuk litigation, you can tell.

Mr. McLAUGHLIN.—Q. You could injure him worse than that. Do not spare Judge Noyes.

A. I understand I am here to tell the truth, and not to spare anybody or punish anybody.

Q. Yes. I will pass from that.

A. I was not attorney in that matter myself. I learned it from other parties.

(Testimony of W. T. Hume.)

Q. I know one gets confused about these things, I appreciate that. Now, we will get down to the pleading on the 23d day of July, 1900, he day he receiver was appointed, on the day the pleadings in these various cases represented. A. Yes, sir.

Q. And the Chipps case, and the other two that I think you mentioned, were originally commenced in that court and before Judge Noyes?

A. The Chipps case, and the Kjellman case, and the Rogers case, and the Melsing; three cases.

Q. Did you think they were proper cases for the appointment of a receiver?

A. Outside of the Chipps case, I did.

Q. Did you think in the Chipps case a receiver should not be appointed? A. I did.

Q. You prepared the pleadings in the Chipps case?

A. I did.

Q. Did you have a complaint verified in that case?

A. I did.

Q. Did you have what they call a bill in addition to the complaint filed, at the same time and with it?

A. I think so.

Q. Did you have, in addition to that, an affidavit?

A. Yes, sir.

Q. And in the affidavit did you state facts that you deemed sufficient, outside of the complaint and what you call the bill, did you state facts that you deemed sufficient, and believed to be sufficient ground for the appointment of a receiver?

(Testimony of W. T. Hume.)

A. The affidavit was prepared by Mr. Hubbard.

Q. You knew of it? A. I knew of it.

Q. You presented it? A. I presented it.

Q. Did you prepare the bill? A. Yes, sir.

Q. And you prepared the complaint?

A. Yes, sir.

Q. What was your object in preparing the bill as well as complaint, if you did not want the receiver? Did you mean by a bill of complaint, to add the two together, the one was a bill and the other a complaint, and putting the two together it might be a bill of complaint?

A. No, sir.

Q. What was it? A. My theory was—

Q. (Interrupting.) I am asking you what you did do, not your theory.

A. I am giving the reason why I prepared it. I prepared a complaint in an action in ejectment, and an ancillary bill in equity, ancillary to the action at law, on which bill to apply for a receiver.

Q. You did apply for a receiver on the bill?

A. Yes, sir.

Q. Was it proper? Did you do a proper thing in making application for a receiver on that bill?

A. I thought so.

Q. Did I understand you to say you did not think it was proper a moment ago?

A. I said, from a legal standpoint, I thought it was proper; but, on the facts of the case, I did not think it was a proper case in which to apply for a receiver.

(Testimony of W. T. Hume.)

Q. But you did apply? A. Yes, sir.

Q. Then, you used your legal knowledge against your inner consciousness of what was right?

A. No, sir. I will give you the reason why I applied for a receiver in the Chipps case. I advised McKenzie at the time Chipps was brought into my office, the first time when they arrived--

Q. I understand that.

A. I advised McKenzie, after his statement, that there was nothing in the case; that I had looked into it in 1899 with reference to those titles, and I believed the Lindeberg location was a valid location. He told me he had consulted the best attorneys in the East, and under all the facts they advised him it was the best case we had, it was the richest case we had on Anvil Creek, and that was the case he wanted commenced; that he had made all his fight on that case, and did not want to quit, and all he wanted me to do was to prepare the papers. I prepared the complaint and the bill, and Mr. Hubbard prepared the affidavit. The action was begun, the application for the appointment of a receiver, and all the proceedings on the Discovery matter were against my advice to McKenzie, but he being the man that controlled the Chipps interest, I felt I was compelled to follow his suggestion, and I made the application because he said that lawyers whom he consulted advised him he had a good case.

Q. You deferred to the wisdom of Mr. McKenzie?

A. I deferred to the wishes of my client, who said he was going to have it done anyhow.

(Testimony of W. T. Hume.)

Q. Believing you were going to be paid, you thought you would do whatever he asked you to do?

A. I expected to be paid for my services.

Q. Taking the complaint and the bill and the affidavit together, would it, to a court, make a proper case for the appointment of a receiver, when presented to a Court or Judge, legally? A. No, sir.

Q. It would not? A. No, sir.

Q. Did you tell the Court it did not? A. No, sir.

Q. Did you tell the Court it did? A. I think I did.

Q. That it did state grounds sufficient?

A. I think I did.

Q. And at the time were you telling what you knew to be untrue? A. No, sir.

Q. You believed it to be true? A. Yes, sir.

Q. It was not true?

A. No, sir. The Circuit Court of Appeals held it was not a case in which a receiver should be appointed, so I have changed my opinion.

Q. As the Circuit Court of Appeals has spoken on the subject, you now remember you had doubts about it all the time? A. No, sir.

Q. Now, Mr Hume, is that not really the truth?

A. No, sir.

Q. That after the decision of the Circuit Court of Appeals, you remembered you said, "I told you so"?

A. No, sir. I changed my opinion since the decision of the Circuit Court of Appeals.

Q. You have changed your opinion?

(Testimony of W. T. Hume.)

A. Yes, sir; that is the law of the land now. I say, that decision is the law, and I have changed my opinion.

Q. That is an astounding declaration. I accept that statement. At that time, in the light you then viewed it, and in the light that the Court viewed it, it was a proper case for the appointment of a receiver?

A. On the face of the papers, I thought it was a proper case.

Q. In the light of the decision of the Court of Appeals of this Circuit, it was not; that was all you meant to say? A. They have decided it was not.

Q. That is all you mean to be understood as saying?

A. That is what I said, and intended to say.

(At this hour of 4 o'clock P. M., the Commissioner, with the consent of counsel, ordered an adjournment until to-morrow, Friday, October 18, 1901, at 10 o'clock A. M.)

Friday, October 18, 1901.

Present: The Commissioner, the official reporter, and counsel for the respective parties.

W. T. HUME, cross-examination resumed.

Mr. McLAUGHLIN.—Q. Mr. Hume, in the course of your testimony, I think you have stated that you had a conversation, or perhaps more than one conversation, with Judge Noyes, in relation to this litigation—I mean, of course, outside of the conversation that you would have ordinarily in presenting matters to the Court?

A. Yes, sir.

Q. Have you stated that you had more than one conversation where Judge Noyes was present, when you dis-

(Testimony of W. T. Hume.)

cussed anything in relation to the writ or writs of supersedeas that were issued from the Circuit Court of Appeals?

A. I think I have referred to two conversations that I recollect of now. I might have referred to more.

Q. I want to fix the date of each conversation, and the place, and who were present.

A. The exact date of either conversation, I could not give, as I had no reason at the time to fix the date in my mind.

Q. Well, the month.

A. The first conversation with reference to the application for a writ of supersedeas, or the sending up of the transcripts to the Circuit Court of Appeals, was had in the month of August, about the middle of August, at the time that Mr. McKenzie and myself went to Judge Noyes' office with reference to the sending of James L. Galen to procure attorneys in the matter. Mr. McKenzie and Judge Noyes and myself were present.

Q. Judge Noyes and yourself only were present?

A. And Mr. McKenzie. There may have been other persons present, but the conversation was between the three of us. As to whether there were others or not, I would not undertake to say.

Q. Did you say that Mr. Galen was not there?

A. I am not positive whether he was there or not. The errand is what fixes the matter in my mind, not the persons present. The errand on which Mr. McKenzie and I went there is what fixes the purpose in my mind, and not the persons present.

(Testimony of W. T. Hume.)

Q. That was in the Judge's chambers?

A. In his office there. The door was open. It was two small rooms. Whether the conversation was had while he sat at his desk in one room, or standing in the other room, I could not say. It was in what is known as the Judge's chambers.

Q. But you could not say whether it was in the chambers proper, or an adjoining room?

A. We talked in both rooms. It was immaterial which room it was in. They were both open.

Q. You went there for the express purpose of discussing the questions that you did discuss?

A. We had concluded to send Mr. Galen outside, Mr. McKenzie and I. Mr. Galen had been appointed United States Commissioner—

Q. You stated that before.

A. We went there for that purpose.

Q. You went there for that express purpose?

A. We went there on that errand.

Q. That was in relation to sending Galen out to see some one at Portland, your former partner, or some one else?

A. No, sir, that was in reference to sending Galen out to procure the services of Senator Carter to obtain attorneys. The Portland man was simply an incident.

Q. Simply an incident, of course.

A. To hold the matter up until the regular attorneys could appear.

Q. That is, for the purpose of having some one ap-

(Testimony of W. T. Hume.)

pear here at the Circuit Court of Appeals, and resist, as you say, the granting of the appeal?

A. No, sir.

Q. What, then?

A. We did not know what proceeding would be applied for here. We wanted an attorney to appear for the interests of the plaintiffs in the case.

Q. In any proceeding that might be applied for?

A. In any proceeding that might come up in the Circuit Court of Appeals, and if necessary obtain time to take testimony.

Q. You came, as I understand it, for the purpose of having, if possible, some one appointed in Mr. Galen's place, to take his place until he got back?

A. No, sir.

Q. What was it for?

A. Mr. McKenzie and I—

Q. (Interrupting.) I say, what was it for?

A. It was for the purpose of explaining why Mr. Galen came outside instead of going to his post of duty.

Q. Had he gone at the time?

A. I am not certain whether he had been there, or whether he was just going. He may have been there and come back. He had been appointed, as I understood, and he was either just going to Council City to take his post of duty, or he may have been there and come back, and it was to explain his reason why he did not go and get the consent of the Court to his going outside instead of going there.

(Testimony of W. T. Hume.)

Q. But you say you never had another conversation with Judge Noyes, did you, in relation to these matters?

A. Yes, sir.

Q. In relation to the writs of supersedeas. That had no relation to the writ of supersedeas at all, did it?

A. It was a step concerning whatever proceedings might be taken out here, whether it was the writ of supersedeas, or whatever it might be.

Q. Let me understand the thing clearly. No writ of supersedeas had issued at that time? A. No, sir.

Q. Then, I say, it was not in relation to any writ of supersedeas? A. None that had been issued.

Q. And you did not know what the defendants in the actions wanted, or what they would apply for?

A. We did not know definitely.

Q. Now, when was the next conversation that you say you had with Judge Noyes in relation to the writs of supersedeas, if you had another?

A. I think that was after the arrival of the writs, the one that I remember. It was only a slight conversation.

Q. I am getting at simply the time, Mr. Hume.

A. That is an awful thing for me to fix.

Q. Fix it about the time.

A. Well, it was about the time, and shortly after the arrival of the writs. It was between the 15th of September and the 21st. I think I was not at the Courthouse on the 21st.

Q. Between the 15th and the 21st of September?

(Testimony of W. T. Hume.)

A. Yes, sir.

Q. That conversation was where?

A. At the same place.

Q. And who was present?

A. McKenzie was present that I know of. Whether Wheeler was there or not, I could not say. I think he was; I am not positive.

Q. You only then remember of McKenzie being present?

A. My attention was not attracted to other persons. There may have been others there. The clerk may have been there. It was immediately adjoining his office.

Q. I say, you only remember of McKenzie being present?

A. I remember McKenzie being present, and Judge Noyes, because we were the only persons engaged in the conversation. That is all that attracted my attention.

Q. I say, besides yourself and Judge Noyes, you only remember McKenzie?

A. Yes, sir, for that reason.

Q. For what reason?

A. Because my attention was not attracted to others, we three being the only ones engaged in the conversation.

Q. That was the conversation in relation to the writ?

A. The question came up in relation to the writ, as to whether it was void or not.

Q. Did you go there, you and McKenzie, or do you say you went there for the purpose of discussing that question? A. No, sir.

(Testimony of W. T. Hume.)

Q. Did you and McKenzie go there together?

A. I think not, unless we went upstairs together; we did not go from the office together.

Q. Did you agree to meet there? A. No, sir.

Q. Did you happen to meet there, a mere accidental meeting? A. It was purely accidental.

Q. You did not know that McKenzie was going?

A. I did not know it, no, sir.

Q. McKenzie, so far as you know, did not know that you were coming there?

A. I do not know that he did or not.

Q. Judge Noyes did not know that either of you were coming?

A. I do not know whether he did or not. It was my habit to go to the courthouse every morning during this time.

Q. Were there any other conversations that you claim to have had with Judge Noyes in relation to the writ of supersedeas, with the exceptions mentioned already?

A. I do not recollect of any personally with Judge Noyes, although others may have occurred.

Q. I am asking you simply for your recollection.

A. I have no recollection now. My recollection might be refreshed, but I do not remember any.

Q. I understand you to say that the reason why you cannot fix the date any more definitely than to say it was between the 14th and 15th and the 21st of September, was that during that time you were going to the court-

(Testimony of W. T. Hume.)

house every day? A. That is not the reason only.

Q. Was that one of the reasons?

Mr. PILLSBURY.—I did not understand him to say so. He said he was there according to his habit. He did not say that habit had been formed between the 15th and the 21st.

Mr. McLAUGHLIN.—I did not mean it had.

Q. It was your habit during that time to go to the courthouse every morning?

A. I went to the courthouse every morning, unless on the way I learned that Judge Noyes was not holding court; then I did not go.

Q. In which building was that?

A. That was on Stedman avenue.

Q. And the chambers were where?

A. On Stedman avenue, the only place we had until the new courthouse was completed.

Q. Where was the courthouse at that time with reference to the Judge's courtroom?

A. The courthouse was about to be constructed. We did not get into the courthouse until October.

Q. Where was court held at that time?

A. At that place, and in Brown's Hall, whichever place the Judge saw fit to go to.

Q. At the Judge's chambers and Brown's Hall?

A. He held the court at both places.

Q. That is what I mean. Either at the place you call the chambers, or at the hall? A. Yes, sir.

(Testimony of W. T. Hume.)

Q. Then you had no other conversations with Judge Noyes personally, except the two you have mentioned —in relation to these matters, I mean, of course.

A. I will not say that. I will say that I do not recollect of them now. My memory might be refreshed. If my attention was called to any conversation, I can say whether I had it or not. I do not now, without any memorandum to assist me, recollect any other conversations. I may have had them.

Q. I understand the two you mention are the only two conversations you recollect you had with Judge Noyes in relation to these matters at all?

A. That is, private conversations.

Q. Of course; other than what occurred in the court-room. A. Yes, sir, as far as I recollect.

Q. When did you first tell this story that you have related here on the witness stand, if you ever told it before?

A. That would be a hard matter to recollect. I have told it several times—parts of it—perhaps all of it.

Q. When did you first tell it, do you remember?

A. I think it was in the winter or spring of 1901, as I recollect it now definitely. It was before the opening of navigation.

Q. To whom did you first tell it, as you recollect?

A. The first time that I told it, I told it in the summer of 1900, in the month of August, to Charles E. Hoxsie, who was a very warm personal friend of mine, at about the time that I had insisted upon being relieved

(Testimony of W. T. Hume.)

of any further obligation in the matter, and found myself not in sympathy with—

Q. (Interrupting.) That was when, you say?

A. In the month of August, 1900.

Q. That is, you told the part of the story that came up to that date?

A. Yes, sir. I talked the matter over with Charlie Hoxsie with reference to the situation I was in at that time.

Q. What was Hoxsie's business?

A. He was engaged in the saloon business, and also engaged in mining. He had large mining interests there.

Q. He was a saloon-keeper, and as an incident had mining interests?

A. No, sir, he was a miner, and as an incident a saloon-keeper.

Q. Put it in that way.

A. His principal business was engaged in mining, and he had a large saloon.

Q. Did you relate this story to him, at the saloon, or the mine?

A. I think probably in the saloon. He was an old-time friend of mine, and I consulted with him considerably. I think I consulted with him soon after the matter occurred.

Q. After you told it to your friend Hoxsie, when did you next tell it, and to whom?

A. The next time that I recollect of making any de-

(Testimony of W. T. Hume.)

tailed statement concerning the matter was in the early spring of 1901, in a conversation with Albert Fink and Ira D. Orton, and I think another gentleman was present at the time, Mr. Charles Yager.

Q. Who was Mr. Fink?

A. Mr. Fink is an attorney in Nome.

Q. Representing what interest, as you understood it?

A. At the time I had a conversation with him, he and I were associated together in certain litigation involving No. 7 Gold Run, the case of Ring vs. Yager.

Q. Was he at any time interested on the other side of the litigation mentioned here in these cases?

A. I think, I would not say positively, I think he was attorney in some matters late in the fall.

Q. That is, he came into these cases later on; is that your idea?

A. What his connection with the cases was, I could not say positively. I know he was present at the time of the settlement of the case of Comptois vs. Anderson, and I understood was an attorney in the matter.

Q. Representing Mr. Anderson, was he?

A. One of the attorneys representing Mr. Anderson with Judge Johnson.

Q. But his connection with these cases was subsequent to the time you told him this story, was it?

A. At the time I was talking to him, these cases, as we had information through the press, had been disposed of.

(Testimony of W. T. Hume.)

Q. Had been disposed of?

A. Had been all settled on the outside during the winter of 1899 and 1900. There was no litigation of this kind pending at that time.

Q. Now, go on to the next, if you told this story again.

A. I think not, until I arrived in San Francisco.

Q. When was that?

A. I arrived in San Francisco about the first of October of this year.

Q. The three men you told it to on the second occasion were Mr. Fink—and who else?

A. Mr. Fink, Ira D. Orton, and Charles C. Yager. I think Mr. Yager was present.

Q. Who is Mr. Orton?

A. Mr. Orton is practicing law in Nome, and during the summer of 1900 was in the office of Mr. Metson—Mr. W. H. Metson.

Q. And the other gentleman—who was he?

A. Mr. Yager was a client of Mr Fink's and myself, and Mr. K. Pitman.

Q. Was Mr. Metson interested in this litigation?

A. Mr. Metson was one of the attorneys for the defendant, and I believe Mr. Orton was also.

Q. You desired the information then, I suppose, to reach the attorneys for the defendant?

A. No, sir. I will tell you the circumstances under which I related it, in justice to myself.

(Testimony of W. T. Hume.)

Mr. PILLSBURY.—Q. Do so, if you please.

A. Mr. Fink and Mr. Orton and myself were discussing the orders—

Mr. McLAUGHLIN.—Q. (Interrupting.) Permit me to interrupt you at this point. I wish you would make this as brief as you can.

A. I desire to make it as intelligible as I can, so that my position may not be misconceived or misrepresented.

Q. That would be impossible.

A. I think not when you understand the truth.

Mr. PILLSBURY.—Q. In justice to yourself, proceed. A. Mr. Fink and Mr. Orton—

Mr. McLAUGHLIN.—(Interrupting.) We do not want this explanation to go in as any part of our testimony in this case. We did not call it out. The ordinary rules, I suppose, of examination would be for the witness, under cross-examination, to answer the questions asked, and if he has any explanations to make, he can afterwards make them.

Mr. PILLSBURY.—I think he is entitled to make his explanations with his answers. I say that in justice to the witness.

Mr. McLAUGHLIN.—That depends on whether the question requires any explanation other than the answer to it.

Mr. PILLSBURY.—Go back, Mr. Reporter, and read the question which brought this thing up.

(Testimony of W. T. Hume.)

Mr. McLAUGHLIN.—It could be answered by yes or no.

(The reporter reads from the testimony previously given.)

Mr. PILLSBURY.—Q. Make your explanation, Mr. Hume.

A. Mr. Orton and Mr Fink and myself were discussing the orders that had been made by Judge Noyes in the Ring vs. Yager case, and the procedure that had been adopted in that case, as well as numerous other cases that had occurred during the winter, where similar orders and similar procedure had been adopted, and in the discussion, and while talking over the general actions and orders of the Court during the past year incidentally, this matter was called up, and I told them concerning my relations with reference to McKenzie's receivership, and also the cases that the receiver was appointed in, and the circumstances that I have testified here to a large extent, and my position in regard to the whole matter, as my position had been misunderstood by them, as well as by a good many others at the time. It was not done for any other purpose or any other object than, in conversation at that time, in relating these incidents.

Mr. McLAUGHLIN.—Q. Have you explained now?

A. I have made it as brief as possible.

Q. And the second or third time was when you came to San Francisco, when?

(Testimony of W. T. Hume.)

A. I arrived in San Francisco on Monday, the 30th of September. I can tell from the calendar.

Q. Do you mean September of this year?

A. Of this year. It was either the 1st of October or the 30th of September.

Q. You were sent for, I suppose, to come to San Francisco? A. I was subpoenaed in Nome City.

Q. And to whom did you relate the story here?

A. I was advised to call upon Mr. Pillsbury, and was interviewed by him with reference to what I knew.

Q. Leaving out the conversation you had with Mr. Pillsbury in relation to this matter, were the conversations you had on the two other occasions confidential conversations between you and the gentlemen mentioned?

A. No, sir; the conversation I had with Mr. Hoxsie, although with no injunction of secrecy about it, I think was treated by him as confidential on account of our personal relations.

Q. But the other conversation?

A. The other conversation was not intended to be confidential, nor was there anything said about it being confidential, any more than the discussion of any of the numerous events occurring during the year that we discussed.

Q. You would have considered it no violation or breach of confidence if any of the gentlemen had published it in one of the papers, or related it on the streets to anybody?

(Testimony of W. T. Hume.)

A. I should have looked at it in the same view that I would a publication of any conversation between persons, where no injunction of secrecy had been had, but where there was a sort of understanding among friends that private conversations that are ordinarily had are not made for publication. I doubt whether any of the gentlemen would have so far committed a breach of courtesy as to publish a conversation that was had, and not purposely for publication.

Q. It would have been no breach if it had been.

A. I think amongst gentlemen it is a breach to publish in the newspaper another person's statement, unless given for that purpose.

Q. I mean talking of it on the streets. I concluded that.

A. I doubt whether gentlemen make it a business to tell around the streets conversations had between friends.

Q. Oh, very well.

A. That is the position I take.

Q. Did you, about that time, make an affidavit in which you pretended to state the facts, for use at Washington?

A. I made no affidavit for use at Washington. I made an affidavit, and I desire to explain that after making this statement.

Q. Wait a moment. I have simply asked you whether you made an affidavit to be used at Washington. Do you say no?

(Testimony of W. T. Hume.)

A. I made no affidavit to be used but for one purpose.

Q. Do you say you did not make an affidavit for use at Washington? A. No, sir.

Q. Your answer to that is no? A. Yes, sir.

Q. Did you make an affidavit at about that time, to be used for any purpose?

A. Yes, sir, it was after that time.

Q. How late after that time was it?

A. Some time after this conversation.

Q. I say, how late after that time?

A. I will state that some time—I will not state how late—some time after this conversation with Mr. Fink and Mr. Orton, Mr. Fink asked me whether or not I would be willing to make an affidavit of the statement I had made to him and Mr. Orton. I told him that I had no objection to swearing to any statement that I had made to them. He said that they desired the affidavit to be forwarded to Mr. Pillsbury, and I made an affidavit, which contained substantially the statements I have made here, as near as I recollect.

Q. Do you know whether Mr. Pillsbury received a copy of that affidavit?

A. I do not know.

Q. Have you seen it?

A. I have seen a copy of the affidavit in San Francisco.

Q. Where?

A. I saw a copy of the affidavit in Mr. Metson's office.

(Testimony of W. T. Hume.)

Q. Do you know whether Mr. Pillsbury has the original? A. I do not.

Q. You have not seen it? A. I have not.

Q. You understood it was to be forwarded to Mr. Pillsbury, did you?

A. I understood that it was to be forwarded to Mr. Pillsbury.

Q. Was that affidavit made about June, 1901?

A. It was in the month of June, 1901.

Q. Before whom was it sworn to, if you recollect?

A. I think it was sworn to before Lewis Garrison, is my recollection.

Mr. PILLSBURY.—If you have any use for the original of that, I can furnish it to you, Judge. If it is any service to you, you are welcome to seeing it (handing same to Mr. McLaughlin).

Mr. McLAUGHLIN.—Thank you.

Mr. PILLSBURY.—I will admit that that is the affidavit that was forwarded to me.

Mr. McLAUGHLIN.—Q. Did you make any other affidavits? A. I did.

Q. In relation to these matters?

A. Not in relation to these matters.

Q. Did you make an affidavit on or about the 20th day of October, 1900, before John T. Reed, the deputy clerk of the United States District Court?

A. If I could examine the affidavit, I could probably say.

(Testimony of W. T. Hume.)

Mr. PILLSBURY.—He has the right to do that.

Mr. McLAUGHLIN.—I think he should examine the signature.

Mr. PILLSBURY.—He has a right to see the paper in its entirety.

Mr. McLAUGHLIN.—All I ask of the witness at this time is, I show him the signature and nothing more, and ask him if that is his signature.

The COMMISSIONER.—He is not yet asked as to the contents.

Mr. McLAUGHLIN.—No.

Mr. PILLSBURY.—But if he is shown a paper, he has a right to see it when he is asked about it. You could not show a man a promissory note, and double it up and ask him if that is his signature. The paper might be a forgery.

Mr. McLAUGHLIN.—I am simply asking him if that is his signature, so as to waste no time if it is not his signature.

Mr. HENEY.—Whether he executed the paper.

Mr. PILLSBURY.—He has a right before he answers to look at the paper. If it is attached to the paper, he has a right to see the paper.

Mr. HENEY.—That is not the rule of law.

Mr. McLAUGHLIN.—I insist that the witness either answer the question as to whether that is his signature, or decline to answer it.

(Testimony of W. T. Hume.)

Mr. PILLSBURY.—I advise him he has a right to look at the paper before he answers the question.

Mr. McLAUGHLIN.—We insist that he has not.

The COMMISSIONER.—I do not think I have any right to pass upon it.

Mr. McLAUGHLIN.—I think no more than any other question.

The WITNESS.—I should want to examine the paper before I testified with reference to whether I signed it.

Mr. McLAUGHLIN.—Q. When you see your signature, cannot you tell whether it is your signature without looking at the paper? A. I can.

Q. I ask you whether that is your signature?

A. I am not positive whether it is my signature or not, without an examination of the paper above it. It resembles my signature.

Q. It looks like it? A. Yes, sir:

Mr. PILLSBURY.—We ask to have that paper marked in some way, so that we may know what it is. I suppose there is no objection to my looking at it?

Mr. McLAUGHLIN.—Not at all.

Mr. PILLSBURY.—Mr. Commissioner, will you mark it "Respondent Noyes' Exhibit No 1"?

(The paper is marked "Respondent Noyes Exhibit No. 1. E. H. H., U. S. Commissioner.")

Mr. McLAUGHLIN.—At this time I will ask the Commissioner to also mark another paper, which I will ask

(Testimony of W. T. Hume.)

to have marked "No. 2," and will examine the witness about it.

(The paper is marked "Respondent Noyes Exhibit No. 2. E. H. H., U. S. Commissioner.")

Q. Did you on or about the 15th day of July make another affidavit before A. J. Bruner, a notary public?

Mr. PILLSBURY.—I insist upon the rule, that if the witness is to be interrogated about a paper, he should be shown the paper.

Mr. McLAUGHLIN.—I will show him the paper. I ask him if he has any recollection of making an affidavit about that time before Mr. Bruner.

Mr. PILLSBURY.—You and I do not disagree about the rule. If you have a paper there, it is no use to test his memory about it, because the paper speaks for itself.

Mr. McLAUGHLIN.—We do not agree about the necessitating the recollection of this witness..

Mr. PILLSBURY.—That is my understanding of the rule. If he is interrogated about any paper, he should be shown the paper.

Mr. McLAUGHLIN.—I have simply to say that I have only asked this witness whether he recollects having made an affidavit in relation to these matters about the 15th day of July, before A. J. Bruner, a notary public, residing in the District of Alaska.

Mr. PILLSBURY.—You see, your question is about these matters. The affidavit speaks for itself. Unless

(Testimony of W. T. Hume.)

you want to contradict the witness by the paper by not showing it to him in the first place, there is no purpose in the examination. I understand that is the very reason of the rule. You cannot trap a witness. You have got to deal with him fairly, squarely, and openly. If you are going to ask him about the paper, let him look at it, and the paper speaks for itself.

Mr. McLAUGHLIN.—The zeal exhibited is certainly commendable, but this witness is a lawyer, and I insist I have a right to ask him whether he made an affidavit about that time before the notary public mentioned. There is no trapping of the witness, no attempt to do so, no unfair method is being pursued, and I think counsel knows that.

Mr. PILLSBURY.—I say that, as I understand, is the rule, and I do not know any reason why it should not be followed.

The COMMISSIONER.—As you know, gentlemen, I have no authority to pass upon the competency of the testimony.

Mr. McLAUGHLIN.—I insist upon an answer to the question.

The WITNESS.—If I may examine the paper, I can state whether I signed it or not.

Mr. McLAUGHLIN.—Q. I do not ask you whether you signed it at all. I ask you whether you made an affidavit.

(Testimony of W. T. Hume.)

Mr. PILLSBURY.—Mr. Commissioner, I advise the witness, under the question put to him, that before answering he has a right to be shown any paper to which that question relates. The question is whether he made an affidavit about these matters. That is a very indefinite term, and if there is a paper, the paper speaks for itself, and it is the best evidence of exactly what he did do.

Mr. McLAUGHLIN.—Q. Do you decline to answer the question?

A. I will answer the question if I may examine the paper.

Q. Do you decine to answer the question unless you are first permitted to examine the paper?

A. Under the advice of Mr. Pillsbury, I shall decline to answer the question until I examine the paper, that being my right.

Q. Under Mr. Pillsbury's advice, you so decline?

A. And that being my right as a witness, as I understand it.

Q. And in addition to that, your own knowledge of your rights as a witness? A. Yes, sir.

Mr. McLAUGHLIN.—As I understand it, the Court will not certify questions during the examination?

The COMMISSIONER.—We tried that in this very matter on the former hearing, or similar matters, with the result that we found we had to be going to Court every five minutes. A witness refused to answer all the questions. Then we resorted to the ordinary practice,

(Testimony of W. T. Hume.)

which I understand is that at the close of the examination, or such other time as may be agreeable to counsel, the Commissioner certifies it to the Court.

Mr. HENEY.—In this particular matter Mr. Pillsbury has advised the witness not to answer. The witness has not declined of his own motion. We cannot anticipate that Mr. Pillsbury, with his learning of the law, will advise the witness very frequently in that way.

Mr. PILLSBURY.—I think you are not quite accurate. I did not advise him not to answer. I advised the witness as to what I thought his right was, so that he could exercise it if he saw fit.

Mr. HENEY.—Then I think we had better interrogate him again.

Mr. McLAUGHLIN.—Q. Did you construe the advice given you by Mr. Pillsbury that you had a right not to answer the question unless you first saw the paper?

A. I construed Mr. Pillsbury's advice to be that my right as a witness entitled me to an examination of the paper before I was compelled to answer the question, and I exercised my right.

Q. And for that reason you so refused?

A. I exercised my right as a witness to refuse to answer the question until I examined the paper.

Mr. HENEY.—I think it is very plain that the refusal is based on Mr. Pillsbury's advice, and I think it will not interrupt the proceedings very much.

(Testimony of W. T. Hume.)

The COMMISSIONER.—Do the counsel ask that the proceedings be stayed and certified to the Court?

Mr. PILLSBURY.—I have no objection, if the Court is in session, to going right down now and let the reporter read what has taken place, and let the Court pass upon it. If I am in error, the sooner I know it the better. I wish the record to show that when the question was put, Mr. McLaughlin held a paper in his hand and referred to it.

Mr. McLAUGHLIN.—Certainly, I had the paper and referred to the paper.

Mr. PILLSBURY.—And the paper had previously been marked by the Commissioner at his request.

Mr. McLAUGHLIN.—That is correct.

The COMMISSIONER.—And is marked "Respondent Noyes' Exhibit No. 2."

Mr. PILLSBURY.—And at the time of marking it, counsel stated he proposed to question the witness about that paper. If there is any desire so to do, I am willing to go to the Circuit Court of Appeals now and let the reporter read what has taken place.

Mr. McLAUGHLIN.—I think it is hardly worth while to waste time to certify the question now.

Mr. PILLSBURY.—If I am in error, I am willing to be corrected, and will give you every facility to do it.

Mr. McLAUGHLIN.—We all are.

Mr. PILLSBURY.—I hope so, and believe so.

(Testimony of W. T. Hume.)

Mr. McLAUGHLIN.—Most of us may occasionally be in error.

Mr. PILLSBURY.—I cheerfully concede that, so far as I am concerned.

Mr. McLAUGHLIN.—Q. Do you know your signature when you see it? A. I think I would.

Q. I will ask you to state whether that paper, "Respondent Noyes' Exhibit 2," is in your handwriting and signed by you, or if not in your handwriting, whether it is your signature?

A. Yes, sir, this is my handwriting and that is my signature. I wrote that affidavit and signed it.

Q. You swore to it also?

A. I did. I desire to state the circumstances under which I made it.

Q. I have not asked you about that.

Mr. PILLSBURY.—That, I understand, is the right of the witness.

Mr. McLAUGHLIN.—I have not as yet offered it in evidence.

Q. Now, at the time that the affidavit that you made in June, 1901, and was forwarded to Mr. Pillsbury, and a copy handed to Mr. Metson, was made by you, the matters were then fresh in your recollection, weren't they?

A. Well, I believe that the matters that I testified to were fresh. Of course, it has been a long time ago since these events occurred, and in making the affidavits and my statement here, I have undertaken to give

(Testimony of W. T. Hume.)

what I believe to be the truth as I recollect the circumstances at the time that I testified. I may have stated matters in the affidavit that I do not remember now.

Q. Yes, of course. But you remembered at that time all about the arrangement made which you testified to yesterday as to the copartnership between Mr. Wood, Mr. McKenzie, and yourself; at least, you remembered it as well then as you do now?

A. I thought so.

Q. Now, you testified that on the next morning after Mr. McKenzie had spoken to you about the matter, or I think the day before, that Mr. Wood went out, Mr. McKenzie remaining in the office, and then it was that he told yourself and Mr. Beeman that he must have a quarter interest for himself, to be used in the manner that you testified to yesterday?

A. I think I testified yesterday that Mr. McKenzie called Mr. Beeman and myself into the back room, either at that time or shortly after this conversation at which Mr. Wood was present. How long Wood remained, I do not think I fixed, whether he went out immediately and we adjourned, and he came in afterwards. Those are details that I would not be accurate about.

Q. Did you testify yesterday as follows: "I was introduced to Mr. Wood, and in the presence of Mr. Beeman and Mr. Hubbard, Mr. McKenzie stated to Mr. Wood substantially the conversation he had had with me and Mr. Beeman, the proposition he made then that

(Testimony of W. T. Hume.)

Mr. Wood should become a member of the firm, and have a quarter interest in the firm, and that I should be appointed deputy, and that for the present it was not advisable that Mr. Wood's name should appear as a member of the firm, but that McKenzie, at the proper time, would suggest when it was the proper time, for his name to appear. Then, after discussing the general situation, I think Mr. Wood left, and Mr. McKenzie took Mr. Beeman and myself into the back room of the office, we having three rooms in that place, and stated—the conversation was like this—he said, 'I want to become a member of your firm also, and I want another quarter of your business.'" Did you so testify yesterday?

A. I think I testified to that yesterday, and I think now that Mr. Wood left; but as to whether or not he did, as I say, those are details that I would not be positive about now; whether Mr. McKenzie called us immediately into the back room, or whether he went away and came back. I think I stated yesterday he called us into the back room. To state whether that occurred immediately following the conversation with Mr. Wood, or whether he went away and some time elapsed, it was so closely connected that that detail I would not undertake to be positive about.

Q. Have you read the affidavit which was forwarded to Mr. Pillsbury since you came to San Francisco?

A. I read it, I think, some week or ten days ago—a week ago, or something like that.

(Testimony of W. T. Hume.)

Q. Did you not read it last night for the purpose of refreshing your recollection?

A. I did not, sir.

Q. Or this morning?

A. I did not, sir. My attention has not been called to that affidavit since yesterday.

Q. Do you remember now that in the affidavit forwarded to Mr. Pillsbury, your statement of that transaction was different? A. I do not—

Q. You do not?

A. (Continuing.) —recollect whether this is the same as my testimony yesterday, or whether there was a time elapsed, because, as I say now, I am giving you my best recollection, and yesterday I attempted to give it.

Q. Did you, in the affidavit that you made in June, 1901, state, in relation to that transaction, referring to the transaction of Mr. Wood's becoming a member of the copartnership and his name not appearing, that about or after that time, Alexander McKenzie returned to the office, and sat down by affiant, meaning yourself, placing his hands on affiant's knees, and demanded of affiant and affiant's partner, E. R. Beeman, to give him, Alexander McKenzie, another quarter interest in the business of affiant's firm?

Mr. PILLSBURY.—I understand, Judge, that you are now reading from an affidavit previously made by the witness.

(Testimony of W. T. Hume.)

Mr. McLAUGHLIN.—I am referring to an affidavit made in June, 1901, in relation to the transaction that he testified to here yesterday.

A. I swore to that in the affidavit, yes, sir.

Q. You swore to that in the affidavit?

A. Yes, sir, and I think that is substantially true. I say now that at the time I made that affidavit, my recollection was that he had gone away and come back, and yesterday and to-day I have been in doubt as to whether that conversation between McKenzie, Beeman, and I, took place immediately after the conversation with Wood, or whether there was a time elapsed between the two.

Q. Did you have any doubt about it when you testified yesterday? A. I did.

Q. You did not hesitate at that point, did you?

A. I did not hesitate. I testified yesterday to just what my recollection was. I have thought over this testimony during the night, to see whether there was any inaccuracies, or whether my recollection was clear; and, since my attention has been called to that incident, I am in doubt now as to whether the conversation took place at the time of the conversation with Wood, or whether he went away and came back about an hour afterwards.

Q. Do you remember the incident of Mr. McKenzie placing his hand on your knee?

A. I have in my mind a picture of what took place in the back room.

(Testimony of W. T. Hume.)

Q. Do you remember Mr. McKenzie's placing his hand on your knee?

A. I recollect the conversation, and I remembered at the time I made the affidavit, of that circumstance, and I think—

Q. You had forgotten that yesterday?

A. Well, that was an immaterial matter that did not occur to me.

Q. You think that was immaterial, then?

A. It did not occur to my mind yesterday; that is all. I did not testify to it.

Q. It was immaterial whether he remained or whether he came back in an hour?

A. The material part of it was the conversation.

Q. You had your entire thought concentrated upon the conversation, and the details of what occurred you did not think anything about?

A. That is not true. I attempted to give the details and the conversation as I recollected them yesterday, and I attempt to give them to-day as I recollect them. I may omit some details by not remembering at the time I answer the question.

Q. I hand you "Respondent Noyes' Exhibit No. 1," the paper handed to you a moment ago, in which you stated that the signature looked like your signature. I now ask you to examine the paper and say whether, after examining the paper, it not only looks like but is in fact your signature.

A. (After examining the paper.) I have no recollec-

(Testimony of W. T. Hume.)

tion of making any such affidavit as that, as it does not contain the facts.

Q. Will you swear that you did not make that affidavit? A. I will swear that I never swore to that.

Q. Do you say that is not your signature?

A. I will not swear that that is not my signature, but I have no recollection of having signed it, and the affidavit does not contain the facts nor state the truth, and I have no remembrance of ever having made any such statements or made any such affidavit, and I know that I never have sworn to any such state of facts. How my signature came there, or under what circumstances, I cannot state now, as I was not at the courthouse on the 20th day of October, 1900.

Q. Will you swear that the typewritten portion of that page (referring to the third page of "Respondent Noyes' Exhibit No. 1") was not there at the time you signed it—on the last page and immediately preceding your signature?

A. I will state that I have no recollection of any such affidavit. I do not recollect now how my signature became attached to it. I was not at the courthouse on the 20th day of October, and did not swear to that affidavit before John T. Reed, because the facts stated in that affidavit are not true, and I never have stated to any person that they were true.

Q. You do swear that you did not make that affidavit before John T. Reed?

A. Yes, sir. I never swore to it before John T. Reed.

(Testimony of W. T. Hume.)

Q. You knew John T. Reed, did you?

A. Yes, sir.

Q Who was he?

A. He was clerk of the court. I have been informed that there was something of that kind out, and took pains to ascertain my whereabouts on the 20th day of October, 1900, and I was not at the courthouse, nor was I there on the 20th day of October, 1900, before John T. Reed.

Q. Are you prepared to prove an alibi?

A. I was not attempting to do so. I knew of forgeries being committed in the office of the clerk, and I had occasion, being advised that some affidavit of that kind was in the possession of the parties, I took occasion to investigate and find out.

Q. I have not asked you about that at all.

A. I was not trying to prove an alibi. I was trying to find out where it originated, as I have no recollection of it at all.

Q. Do you swear this is not your signature?

A. I will not swear that it is not my signature, but I will swear that I have no remembrance of how it was procured to that document.

Q. I ask you again to look at the third page, the last page of it, immediately preceding your signature, and between that and the jurat to the affidavit, and ask you to state whether you will swear that the writing contained on page 3 was not on that page when you signed that paper.

(Testimony of W. T. Hume.)

A. I will say this: I don't know whether that writing was there or not—

Q. (Interrupting.) I mean the typewriting; that is what you mean, is it not?

A. Yes, sir, the typewriting. It has the appearance of having been there. But whether I attached this signature to this paper believing it to be some other paper, and never having perused it, I do not remember—I do not remember the circumstances. I know I never swore to this affidavit stating these facts, knowing at the time I attached my signature—

Q. (Interrupting.) I am asking you now about that page. A. Or to that page.

Q Do you mean to insinuate that your signature may have been obtained to this, and you sign it believing it to be something else, without reading it?

A. I may have done so.

Q. Then you are in the habit of doing business loosely, are you, signing papers without looking at them?

A. If a person in whom I had confidence represented that a certain paper was necessary for my signature in reference to certain matters, matters in which he was involved, I might have signed a paper without knowing what the actual contents of it were. I will state that I had declined to sign a similar affidavit a month before that—or a month or six weeks before that.

Q. I am going to reach that stage later.

A. Yes, sir.

(Testimony of W. T. Hume.)

Mr. PILLSBURY.—That is "Exhibit No. 1"?

Mr. McLAUGHLIN.—Yes, that is "Exhibit No. 1." On behalf of respondent Noyes, "Respondent Noyes' Exhibit No. 1" is now offered in evidence, as a part of the cross-examination of this witness.

Mr. PILLSBURY.—It is understood that that goes in, your Honor, with the statement of the witness. We do not admit that it is an authentic document.

Mr. McLAUGHLIN.—Of course it goes in with his statement. At the same time, and as a part of the cross-examination of the witness, "Respondent Noyes' Exhibit No. 2" is offered in evidence. I will ask Mr. Heney to read them in evidence.

Mr. PILLSBURY.—I don't know of any reason why they should be read. They are in evidence, and they will be made a part of the record.

Mr. McLAUGHLIN.—In view of the class of testimony that we have had, yesterday, and which has been reported, as reflecting upon the character of Judge Noyes, by other persons, you certainly do not object to this being read.

Mr. PILLSBURY.—I do not object to reading it, except that it is taking up time. The paper is there, and anybody can see it. It is a little unnecessary diversion, that is all. Anybody can see the paper, of course; it is a public record now.

Mr. HENEY.—"Respondent Noyes' Exhibit No. 1" reads as follows:

(Respondent Noyes' Exhibit No. 1.)

Respondent Noyes' Exhibit No. 1.

"District of Alaska,
ss.
Second Division.

W. T. Hume, being first duly sworn, on oath deposes and says: That he is a member of the law firm of Hubbard, Beeman and Hume, and that said firm is and was at all the times hereinafter mentioned attorneys for the plaintiff in the actions entitled Chipps vs. Lindeberg et al., Rodgers vs. Kjellmann, Comptois vs. Anderson, Melsing vs. Tornanses, and Webster vs. Nakkela; that on the 23d day of July he had prepared and ready for filing the complaints in the above-entitled action; that he sought to find George V. Borchsenius, clerk of the United States District Court; that he inquired for him at his office and at all the places in the town of Nome where said Borchsenius was likely to be found, and that from all the information given him, he became satisfied that said Borchsenius was concealing himself from this affiant; that thereupon this affiant sought to find one Charles E. Dickey, the deputy clerk of said court, and, after inquiring for him at the office, he was directed to the Golden Gate Hotel, at which hotel the said Dickey was then stopping, and, on inquiring for him at the hotel, he was directed to the room occupied by the said Dickey, and that, upon repairing to the room and knocking at the door, he was informed that Dickey was not there,

(Respondent Noyes' Exhibit No. 1.)

and was directed by a man who was in the room to knock in the adjoining room and he might be in that room; that upon so knocking, Hon. Arthur H. Noyes came to the door; that affiant inquired of him the whereabouts of Dickey; that Judge Noyes told him that Dickey had gone out a short time before, but that he would return in a short time, either to the hotel or to the clerk's office; that this affiant then stated to the said Judge that he had several complaints in the aforesaid actions that he wished to file; that in the said actions he desired to apply for a receiver in all of said actions; that he was then ready to present to Judge Noyes the reason why said receiver should be appointed; that said Judge Noyes told him that he would go with him to the Judge's chambers in the Herschler Building across the street, and there hear his application; that they repaired to the rooms in the Herschler Building then occupied by the Judge and clerk; that he there presented the complaints, together with the affidavits used on the original motion for the appointment of receivers; that he read said complaints and said affidavits to said Judge, and explained to him the condition of affairs in and about the property mentioned in said complaints; that plaintiffs were entitled to possession of said property, and defendants were not; that defendants were in possession and working said mines and extracting therefrom large quantities of gold and gold-dust, and were shipping the same out of the district and beyond the jurisdiction of the said District Court of

(Respondent Noyes' Exhibit No. 1.)

Alaska; that the said lands were only valuable because of the gold and gold-dust contained therein, and, in the opinion of this affiant, then expressed to said Court, and in consideration of the said premises and of the methods used by the said defendants in mining said lands, said lands would be of very little value at the time when said action and the right of possession to said lands could be determined; that he spent more than an hour in reading said complaints and affidavits to the Judge; that during said time said Dickey did not return; that this defendant had never met Judge Noyes before; and had never had any other conversation with him at any time or place in reference to the appointment of a receiver on said property, or the litigation about to be commenced; that upon the close of this presentation of the cases, Judge Noyes said that he would make the order appointing the receiver; that he again asked for said Dickey that he might file the said complaints and papers in said cases, and that said Judge Noyes stated that said Dickey would undoubtedly return in a short time; that he, the said Judge Noyes, would sign the order; that when said Dickey returned, he would deliver the complaints and papers to him, together with said order, and have Dickey file them at once; that he left the papers on the table in the room occupied by said clerk and said Judge, and that affiant is advised and believes that on the return of said Dickey, the said Judge delivered the said papers to said Dickey, with his request that the same be filed; that this affiant has ex-

(Respondent Noyes' Exhibit No. 2.)

amined the clerk's register of said cases and the papers on file in said cases, and that said complaints and affidavits are marked as having been filed by said clerk on said 23d day of July, 1900; that said affiant was busy on said date preparing papers in actions to be instituted in the said District Court, and could not, without great inconvenience and loss of time, further prosecute his search for said Dickey or said Borchsenius, and that he explained these facts to said Judge Noyes; said affiant believed then and believes now that said plaintiff in the respective actions have a good cause of action against the said defendants, and that they are entitled to the property and the proceeds therefrom, and should prevail in said actions.

W. T. HUME.

Subscribed and sworn to before me this 20th day of October, 1900.

JOHN T. REED,

Deputy Clerk United States District Court, District of Alaska, Second Division."

Respondent Noyes' Exhibit No. 2 reads as follows:

Respondent Noyes' Exhibit No. 2.

"District of Alaska—ss.

I, W. T. Hume, being first duly sworn, depose and say: That, reserving from the effect of this affidavit any statements made to me by Alexander McKenzie, I will state that I do not know of my own knowledge, nor have I been informed, nor do I believe, that Arthur H.

(Testimony of W. T. Hume.)

Noyes has, as presiding Judge of the District Court for the District of Alaska, Second Division, received any money or pecuniary consideration, nor demanded the same, to influence any decision, judgment, or decree rendered or to be rendered by him as such Judge.

W. T. HUME.

Subscribed and sworn to before me this 15th day of July, A. D. 1901.

A. J. BRUNER,
Notary Public, District of Alaska."

Mr. McLAUGHLIN.—At this time we also offer in evidence, and as a part of the cross-examination of the witness, the affidavit made by him in June, 1901, and ask that it be marked "Respondent Noyes Exhibit No. 3."

(The paper is marked "Respondent Noyes Exhibit No. 3. E. H. H., U. S. Commissioner.")

Mr. PILLSBURY.—You had better read that, as you did the others.

Mr. McLAUGHLIN.—This is a very long document.

Mr. PILLSBURY.—You have started in and read the other two and I think you ought to read that.

Mr. McLAUGHLIN.—If you insist upon it, we will read it in evidence.

Mr. PILLSBURY.—Yes.

Mr. McLAUGHLIN.—You insist upon it?

Mr. PILLSBURY.—Yes.

(Testimony of W. T. Hume.)

Mr. McLAUGHLIN.—Very well, I will read it. It is unnecessarily long to read. It is about as long as all the testimony that we have taken all together.

Mr. HENEY.—"Respondent Noyes Exhibit No. 3" reads as follows:

Mr. WOOD.—It will be understood, and the record will show, that this is not offered on the part of myself.

Mr. PILLSBURY.—That will be shown.

Mr. WOOD.—So there will be no construction that this is offered on my part.

Mr. PILLSBURY.—No. This is offered on the part of Judge Noyes.

Mr. HENEY.—"Respondent Noyes Exhibit No. 3" reads as follows:

Respondent Noyes' Exhibit No. 3.

"*In the United States Circuit Court of Appeals, for the Ninth Circuit.*

In the Matter of
ARTHUR H. NOYES,

In the Matter of
JOSEPH K. WOOD,

In the Matter of
THOMAS J. GEARY.

United States of America,
District of Alaska. } ss.

W. T. Hume, being first duly sworn, on oath deposes and says:

(Respondent Noyes' Exhibit No. 3.)

That he is a member of the former law copartnership known as Hubbard, Beeman, and Hume, engaged in practicing law in Nome, Alaska, during the summer of 1900. That said partnership was composed of O. P. Hubbard, E. R. Beeman, and W. T. Hume, and were of counsel for the plaintiffs in those certain mining suits instituted in 1900, in which Alexander McKenzie was appointed receiver.

That prior to the summer of 1900, and before affiant had come to Nome, affiant was in Seattle in the month of April, where affiant received from affiant's partner, O. P. Hubbard, a telegram urging affiant to come at once to New York on important business. Affiant replied to this telegram, stating that it would be impossible for affiant to come. Thereafter affiant received one other telegram from the said O. P. Hubbard, urging affiant to come at once to New York, and promised that all of affiant's expenses would be paid on said trip. That thereafter affiant went to Washington, where affiant met O. P. Hubbard, Senator Hansborough and Senator Carter. That affiant was told in Washington by his partner, O. P. Hubbard, that his partner, O. P. Hubbard, was in touch with one Alexander McKenzie, who was at that time in New York and who had organized a corporation known as the Alaska Gold Mining Company, and affiant's partner had made arrangements with the said Alexander McKenzie whereby affiant's firm was to transfer to the said Alaska Gold Mining Company the contingent interest that affiant's firm held in the litigation afterwards prosecuted, in which the said Alexander McKenzie was afterwards appointed receiver, and take

(Respondent Noyes' Exhibit No. 3.)

from the said Alaska Gold Mining Company in lieu of said contingent interest the sum of seven hundred and fifty thousand (750,000) dollars worth of stock of the said Alaska Gold Mining Company, and that the litigation should be prosecuted by the said Alaska Gold Mining Company, of which the said Alexander McKenzie was president, and which the said Alexander McKenzie was manipulating.

That affiant's partner stated to affiant at this time that the said Alexander McKenzie would control the appointment of the Judge for Nome and the district attorney, and that the said Judge and district attorney would be friendly to the interests of affiant's firm and the Alaska Gold Mining Company. That thereafter affiant went to New York and had a conversation with the said Alexander McKenzie at the Everett House, in which conversation the said Alexander McKenzie stated to affiant that he would give to affiant and his partner two hundred and fifty thousand (250,000) dollars each, making seven hundred and fifty thousand (750,000) dollars in all, of the stock of the Alaska Gold Mining Company, for the contingent interest which affiant's firm held in the litigation afterwards instituted in the District Court in the District of Alaska, Second Division. That the said Alexander McKenzie controlled the appointment of the judge for Nome and the district attorney, and that the said Alexander McKenzie could not at that time reveal who the judge and the district attorney would be, but that affiant need have no fear, as he, the said Alexander McKenzie, had

(Respondent Noyes' Exhibit No. 3.)

interested in the said Alaska Gold Mining Company a large number of wealthy, influential, and prominent men, and that all that affiant would need to do would be what he, the said Alexander McKenzie, would tell affiant to do, and that affiant and his partners would come out all right, and that he, McKenzie, had arrangements made with the most prominent stockbrokers on Wall street, New York, to handle said stock and sell it in the fall. That affiant and his partners could then sell their stock and realize two hundred and fifty thousand (250,000) dollars each. That the Judge and district attorney who would be appointed would be friendly to the interests of affiant's firm, and the said Alaska Gold Mining Company, and that affiant would have no difficulty whatever in attaining success in the proposed and intended litigation which would afterwards be instituted.

Affiant further says that from hints that affiant received at that time from affiant's partner, O. P. Hubbard, and from the action of Alexander McKenzie, affiant was led to believe that the purpose for which affiant was brought from Seattle to New York was to take affiant into the full confidence of the said Alexander McKenzie, and that for some reason unknown to affiant, this plan was changed after affiant reached New York, and affiant was not given the full and entire confidence of the said Alexander McKenzie nor permitted an insight into the entire scheme.

Affiant further says that in a conversation had at that time in New York with the said Alexander McKenzie, the said Alexander McKenzie discussed certain machinery with

(Respondent Noyes' Exhibit No. 3.)

affiant which he, the said Alexander McKenzie, had had made for the use of the said Alaska Gold Mining Company in Alaska, and that the said Alexander McKenzie, in said discussion, went into the details of said machinery. That said machinery was afterwards sent to Nome on the steamship 'Tacoma,' and was the same machinery afterwards purchased by one Cameron, a receiver appointed by Arthur H. Noyes to work a placer mining claim known as Placer Mining Claim No. 1 on Daniel's Creek.

Affiant says that thereafter affiant left New York and returned to Seattle and Portland, and on the 28th of May affiant left Portland for Nome and arrived in Nome on the 14th of June, A. D. 1900, where affiant met his partner, E. R. Beeman, who had wintered in Nome during the winter of 1899-1900. Affiant says that upon his arrival in Nome, affiant and his partner, E. R. Beeman, engaged in the practice of law and were busily engaged in said practice until the arrival of affiant's partner, O. P. Hubbard, who came to Nome on or about the 20th day of July, 1900, with Arthur H. Noyes, Judge of the District Court for the District of Alaska, Second Division, and Joseph K. Wood, District Attorney, R. N. Stevens, afterwards United States Commissioner for the Precinct of Nome, Archie Wheeler, private secretary to the Honorable Arthur H. Noyes, Alexander McKenzie and Robert Chipps, the plaintiff in the case entitled Chipps vs. Lindeberg and others. Affiant says that the steamer upon which the aforesaid party came to Nome arrived in the roadstead opposite Nome a day or two prior to the 21st day of July, 1900,

(Respondent Noyes' Exhibit No. 3.)

and that on or about the 21st day of July, which was on Saturday, affiant's partner, O. P. Hubbard, came ashore and had a conversation with affiant, in which the said O. P. Hubbard stated to affiant that the said Alexander Mc. Kenzie had arrived with the Judge of the District Court and the district attorney; that he had been successful in the plans that had been discussed in New York; that everything was all right; that the said Alexander McKenzie had had his man appointed judge and had had his man appointed district attorney; that the said O. P. Hubbard, who had been at one time a prospective candidate for the office of district attorney, had been forced to withdraw from the fight for said position, in order to harmonize with the plans of said Alexander McKenzie and bring about harmony between Joseph K. Wood and Arthur H. Noyes in the contest between these two gentlemen for the office of Judge.

Affiant says that said O. P. Hubbard stated to affiant at this time that they had the 'works' and everything would be all right; that we simply had to stand in and do what we were told to do by Alexander McKenzie. That the said Alexander McKenzie would himself be ashore in a short time and final arrangements would be made and adjusted. Affiant says within an hour or two of this conversation with the said O. P. Hubbard, the said Alexander McKenzie came to the office of affiant and stated to affiant that the said Alexander McKenzie had been successful in all his plans, but that Arthur H. Noyes, the Judge, was weak and vacillating, and that the said Alexander McKenzie had some difficulty

(Respondent Noyes' Exhibit No. 3.)

in handling him properly, and that as the said Alexander McKenzie had invested about $60,000 in the scheme and project of the Alaska Gold Mining Company, he, the said Alexander McKenzie, did not propose to lose out at the last moment. That it would be necessary for affiant's firm to take the district attorney, Joseph K. Wood, into the partnership with them, and give to the said Wood a one-quarter interest in the business of affiant's firm. That it would also be necessary for affiant to accept from the said Wood the office of assistant district attorney. That the said Alexander McKenzie had everything arranged to make the fortune of affiant and his partners, and that the said Alexander McKenzie had relied upon the statements made to the said Alexander McKenzie by O. P. Hubbard, and that if affiant and his partner, E. R. Beeman, now undertook to kick out of the traces, that the said Alexander McKenzie would see to it that they won no suits in the District Court for the District of Alaska, Second Division, as he controlled the Judge of said court; that he would ruin affiant and his partner, E. R. Beeman, unless affiant and his partner, E. R. Beeman, agreed to the proposition aforesaid made by the said Alexander McKenzie as aforesaid.

Affiant says that he and his partner, E. R. Beeman, then discussed the situation among themselves, and decided that they were in such a position that they would be forced to accept the terms made to them by the said Alexander McKenzie. That they then agreed to the proposition theretofore made to them by the said Alexander McKenzie. Af-

(Respondent Noyes' Exhibit No. 3.)

fiant says that the said Alexander McKenzie then stated to affiant that he would bring Joseph K. Wood up and introduce him to affiant. Affiant says that shortly after this the said Alexander McKenzie returned to affiant's office with the said Wood and introduced to affiant the said Joseph K. Wood, stating to affiant that the affiant and the said Joseph K. Wood could consummate the arrangements and agreements made and entered upon between affiant and said Alexander McKenzie. Affiant says that thereupon he had a conversation with the said Joseph K. Wood, who stated to affiant that he would appoint affiant assistant district attorney; that so far as his, the said Joseph K. Wood's, one-quarter interest in the said business of affiant's firm was concerned that that would be all right only he, Joseph K. Wood, did not think it would be advisable or good policy until things got in good running shape to insert his, the said Joseph K. Wood's, name as a member of said firm but that said firm should continue its business under the name of Hubbard, Beeman and Hume, and that he, Joseph K. Wood, would take an office adjoining the offices of affiant's firm and adjoining the private office of affiant, which the said Joseph K. Wood did.

Affiant says that under this arrangement and in a conversation with said Joseph K. Wood, said Joseph K. Wood stated to affiant that there was no question of ultimate success of affiant's firm in the proposed litigation which was afterwards instituted, that everything was all right and that if necessary, he, the said Joseph K. Wood, would interplead in said litigation on behalf of the United States so that affiant and his firm would be successful, and

(Respondent Noyes' Exhibit No. 3.)

that this was one of the reasons why he, the said Joseph K. Wood, did not at that time desire his name to appear as a member of the firm of Hubbard, Beeman, Hume and Wood. Affiant says that about an hour after this the said Alexander McKenzie returned to affiant's office and sat down by affiant, placing his hands on affiant's knees and demanded of affiant and affiant's partner, E. R. Beeman, give to him, the said Alexander McKenzie, another one-quarter interest in the business of affiant's firm. That affiant stated to the said Alexander McKenzie at this time that affiant thought that affiant in giving up a one-quarter interest had done about as much as affiant could be expected to do under the circumstances and that affiant did not think that the said Alexander McKenzie should ask affiant for one-half of affiant's business. That thereupon the said Alexander McKenzie stated to affiant that the said Alexander McKenzie would have to become a member of said firm; that the said Alexander McKenzie did not personally wish to have anything from affiant and his partners, but that this Judge that the said Alexander McKenzie had was a peculiar fellow and had to be taken care of, that this interest was not for him, Alexander McKenzie, but was for Judge Noyes; that the said Judge Noyes insisted upon having an interest in said firm and that the thing simply had to be done. Said Alexander McKenzie reiterated the statement previously made that the said Alexander McKenzie had expended $60,000 in this venture and did not propose to lose out at the last moment.

Affiant says that he and his partner, E. R. Beeman, offered a good deal of resistance to this second demand of

(Respondent Noyes' Exhibit No. 3.)

a one-quarter interest but that affiant's partner, O. P. Hubbard, pressed affiant and his partner, E. R. Beeman, to accede to the demand of said Alexander McKenzie urging as a reason therefor, in the presence of said Alexander McKenzie, that unless they so did they had just as well leave the country as he, the said O. P. Hubbard, knew personally that said Alexander McKenzie controlled the said Noyes and that their firm would have no show whatever unless the demands of said Alexander McKenzie were complied with, that the said Alexander McKenzie, thereupon affirmed the statements theretofore made by the said O. P. Hubbard and stated in substance to affiant and his partner, E. R. Beeman, the same. Affiant says that he and his partner, E. R. Beeman, flatly declined to accede to said demand upon the spot and without some consultation and consideration among themselves. That thereupon said Alexander McKenzie stated to affiant that they could give him, said Alexander McKenzie's, answer in the morning, but that said demand must be acceded to and complied with as he, said Alexander McKenzie, would have it no other way; that if said demands were complied with that he would guarantee and assure to affiant and his partner, E. R. Beeman, a large and ample fortune and if said demands were not complied with that the said Alexander McKenzie was in a position to ruin affiant and affiant's partner, E. R. Beeman, and that he would certainly so do. That the said Alexander McKenzie had relied upon the statements made to him by the said O. P. Hubbard and had made all his arrangements upon the supposition that

(Respondent Noyes' Exhibit No. 3.)

the private agreements that he had entered into with the said O. P. Hubbard would be fulfilled and that if affiant and his partner, E. R. Beeman, now kicked out of the traces and did not comply with the demands of said Alexander McKenzie that said Alexander McKenzie would consider that affiant and his partner, E. R. Beeman, had thrown him, said Alexander McKenzie, down. Affiant says that that night he and his partner, E. R. Beeman, considered the demand made upon them by the said Alexander McKenzie and decided that they would be forced to comply therewith and affiant says that on the following morning he notified the said Alexander McKenzie of his compliance with the demands of the said Alexander McKenzie, and that thereupon a written contract was entered into between affiant, E. R. Beeman, O. P. Hubbard, Joseph K. Wood and Alexander McKenzie, which affiant himself prepared and which was written out and signed in the presence of the aforesaid parties and by the aforesaid parties. That at the time of the signing of said contract it was expressly understood by all the parties thereto that the one-quarter interest in the business of the firm of Hubbard, Beeman and Hume held by the said Alexander McKenzie was held by the said Alexander McKenzie in trust for the said Arthur H. Noyes, Judge. Affiant says that said written and signed contract was kept in the safe of affiant's firm until about the closing of navigation in the summer of 1900 when affiant's partner, O. P. Hubbard, surreptitiously extracted the same and affiant has not since seen said contract.

(Respondent Noyes' Exhibit No. 3.)

Affiant further says that as soon as the contract made as aforesaid set out was signed, the said Alexander McKenzie told affiant to go at once to work upon the preparation of the papers in the law suits involving the title to the placer mining claims on Anvil Creek and Dexter Creek, in which said Alexander McKenzie was afterwards appointed receiver and that the said Alexander McKenzie had already arranged with the said Honorable Arthur H. Noyes with reference to the appointment of the receiver, that everything would be all right.

Affiant further says that the said Alexander McKenzie then stated to affiant that affiant should employ all the stenographers in town that affiant could use and to have all the papers drawn at once as it was extremely important that they get this matter in proper shape at once, that the defendants and owners of said placer mining claims were extracting thousands of dollars per day which was a loss to the Alaska Gold Mining Company and it was necessary that the said taking out of gold be at once stopped. Affiant says that affiant at once proceeded under the direction of said Alexander McKenzie to employ three stenographers and to undertake himself the drawing up of the papers necessary in the litigation afterwards instituted. Affiant says that affiant worked day and night on the drawing of said papers. That during the time that affiant was at work upon the drawing of said papers, the said Alexander McKenzie was almost constantly in affiant's office walking the floor and hurrying affiant and affiant's stenographers in their work, urging upon affiant the necessity of immediate action be-

(Respondent Noyes' Exhibit No. 3.)

fore the Honorable Arthur H. Noyes should leave Nome for St. Michael. Affiant says that about noon of July 23d, said Alexander McKenzie was in affiant's office hurrying affiant in the preparation of said papers as aforesaid, and that the said Alexander McKenzie then stated to affiant that said papers must be gotten out that afternoon as he, said Alexander McKenzie, had his teams and men waiting and had had them waiting and in readiness since 8 o'clock that morning to drive said Alexander McKenzie out to Anvil Creek and execute the orders which would be signed by the Honorable Arthur H. Noyes as soon as they should be presented by affiant."

Mr. HENEY.—I cannot see why this should be read.

Mr. PILLSBURY.—It is simply pursuing the same course with that that you have pursued with the other two.

Mr. HENEY.—If there is any purpose in it, very well. We had a purpose in reading the other two.

Mr. PILLSBURY.—What was your purpose?

Mr. HENEY.—To defend a man's character that had already been attacked by incompetent evidence.

Mr. PILLSBURY.—Was it necessary to read those to do that?

Mr. HENEY.—We think so—as far as the newspapers are concerned.

Mr. PILLSBURY.—Then I think the others should be read, too.

(Testimony of W. T. Hume.)

Mr. HENEY.—For what purpose?

Mr. PILLSBURY.—For the same purpose for which the others were read, so that the newspapers can have the whole thing.

Mr. HENEY.—Then you are trying it before the newspapers, are you?

Mr. PILLSBURY.—If part of it is proper to be read for the newspapers, I think the whole should be.

Mr. HENEY.—I am only asking if your purpose is for the newspapers to try the case.

Mr. PILLSBURY.—My purpose is to have the testimony treated alike, and, as you insisted upon reading the other two, this should be read as well.

Mr. HENEY.—That is the result; that cannot be the purpose.

Mr. PILLSBURY.—You can read it or not, as you please.

Mr. HENEY.—I will proceed to read it.

The COMMISSIONER.—If I can assist you to solve this matter, gentlemen, I will state that, as those exhibits are to be left with me, I will hand them over to any reporter who wants them, as they are part of the record in the case.

Mr. PILLSBURY.—I think they should be read.

The COMMISSIONER.—If Mr. Pillsbury desires it read, let it be read.

(Testimony of W. T. Hume.)

Mr. McLAUGHLIN.—If Mr. Pillsbury desires to try the case for the newspapers, we will continue reading it.

Mr. PILLSBURY.—If you want to indulge in that sort of remarks, you have admitted that you read the other two for the benefit of the newspapers.

Mr. HENEY.—No, sir; for the benefit of a man's character who has been attacked by evidence which we think entirely incompetent.

Mr. PILLSBURY.—I simply wish to have the same procedure throughout,

Mr. WOOD.—If the Court please, and all the gentlemen please, I am one of the respondents, and I do not believe those matters should be read as affecting me.

Mr. PILLSBURY.—It is understood that they are not read as affecting you.

Mr. WOOD.—I think I ought to object to that portion, at least, and it ought to be conceded on both sides that that portion of the affidavit not given in evidence against me should not be read.

Mr. HENEY.—I do not desire to read it, Mr. Wood. I do not see why we should read this at this time.

Mr. WOOD.—I have no objection to any part that does not refer to me.

Mr. PILLSBURY.—It has been partly read. Let it be finished.

The COMMISSIONER.—Proceed Mr. Heney, with the reading.

(Respondent Noyes' Exhibit No. 3.)

Mr. HENEY.—Mr. Pillsbury seems to desire that it should be read, so I will proceed.

Mr. PILLSBURY.—You have your opinion about it, of course.

Mr. HENEY.—That is my opinion, yes. (Continues reading:) "That the said Alexander McKenzie reiterated the statement that the 'Swedes,' the term by which the defendants in the said litigation instituted were known and designated by the said Alexander McKenzie, were taking out thousands of dollars per day, which was a great loss to the Alaska Gold Mining Company and must be stopped. That the said Alexander McKenzie was tired of waiting on affiant, and for God's sake for affiant to hurry up. Affiant says that about 4 P. M. of said day, said Alexander McKenzie had been out for about half an hour and returned to affiant's office, and stated to affiant that affiant must hurry up with said papers, as the said Honorable Arthur H. Noyes was getting nervous about the proposition, and that the said Arthur H. Noyes had been sitting at the Golden Gate Hotel, where said Arthur H. Noyes was quartered, waiting for affiant, and said papers pretty much all day, and that if affiant did not soon get out the papers, that the said Arthur H. Noyes was liable to go uptown somewhere, and affiant and said Alexander McKenzie would have difficulty in finding him.

Affiant says that about half-past five o'clock, affiant completed the papers necessary in the premises, which

(Respondent Noyes' Exhibit No. 3.)

said papers consisting of complaints, motions, orders, affidavits, summons, etc., and writs in six cases, each of which said cases involved the title to placer mining claims on the said Anvil Creek. Affiant says that when affiant had completed said papers as aforesaid affiant reported to the said Alexander McKenzie that he had finished and completed said papers, the said Alexander McKenzie told affiant to go at once to the Golden Gate Hotel where affiant would find the Honorable Arthur H. Noyes who would sign the orders and appoint him, the said Alexander McKenzie, receiver as has been agreed upon prior thereto and that everything in the premises was all fixed. Affiant says that affiant at once proceeded to the Golden Gate Hotel where affiant saw the Honorable Arthur H. Noyes sitting on the porch. Affiant says that prior to this time affiant had never seen the said Honorable Arthur H. Noyes, and did not know the said Honorable Arthur H. Noyes by sight. That from the appearance of the person sitting on the porch, affiant, from descriptions which affiant had been given of the said Arthur H. Noyes, presumed that said gentleman was the said Arthur H. Noyes, and therefore affiant went up to said gentleman and asked him if he was Judge Noyes. Affiant says that the said Arthur H. Noyes thereupon stated that he was and that affiant then stated to the said Arthur H. Noyes that he, affiant, was Mr. Hume; that thereupon and without any further consultation or command whatever or any further remarks whatever the said Arthur H. Noyes jumped up and said, 'Come right

(Respondent Noyes' Exhibit No. 3.)

up to my room.' That thereupon affiant and said Arthur H. Noyes went upstairs in said Golden Gate Hotel to the room of the said Arthur H. Noyes. That affiant went into the room of said Arthur H. Noyes where there was present the wife of the said Arthur H. Noyes, and the said Arthur H. Noyes thereupon stated to affiant as follows: 'Well, come on, we will go into Joe Wood's room which is next door.' That thereupon affiant and the said Arthur H. Noyes went into the room of Joseph K. Wood and Archie Wheeler, the private secretary of the Honorable Arthur H. Noyes, who was at that time sleeping and occupying the same room with the said Joseph K. Wood. Affiant says that when affiant had entered the room of Joseph K. Wood with the said Arthur H. Noyes as aforesaid, the following proceedings were had and as nearly as affiant can at this time recollect, the following conversation:

AFFIANT.—'Judge, I have some complaints and bills in equity here and affidavits which I desire to file and applications for the appointment of receiver on certain properties on Anvil Creek. I presume that these papers ought to be filed with the clerk before the application is made, but I have been unable to find the clerk.

JUDGE.—Oh, Mr. Dickey, the clerk, is uptown somewhere and will be back in a short time and as soon as he comes back I will have him file the papers and you can leave them with me and they will be filed at the same time they were filed with me. What papers are they?

(Respondent Noyes' Exhibit No. 3.)

AFFIANT.—These are applications for the appointment of receiver in cases involving title to No. 2 Below Discovery on Anvil, Discovery 3, 4 and 5 Above and 10 and 11 Above and one on Nakkela Gulch.

JUDGE.—Well, where is the Chipps case?

AFFIANT.—The Chipps case is Discovery.

JUDGE.—Have you the papers?

AFFIANT.—Yes, sir. I will find the affidavit in the Chipps case.

JUDGE.—That is unnecessary; have you got the orders appointing receiver?

AFFIANT.—Yes, sir. I would like to recommend for appointment Alexander McKenzie.

JUDGE.—Yes, I have known Mr. McKenzie a good many years, and he is a very reliable and responsible man and I am not acquainted here, and I will have to appoint some person that I am acquainted with. I think Mr. McKenzie would make a very suitable receiver. Just let me have the orders.'

That thereupon affiant handed to the said Honorable Arthur H. Noyes, the orders in all of said cases, and that said Arthur H. Noyes signed the same without reading said orders or any of them. Affiant says that the said Arthur H. Noyes stated to affiant that affiant might leave the said papers with the said Arthur H. Noyes, and that the said Arthur H. Noyes would see to it that they were filed by the clerk, Mr. Dickey, as soon as the said

(Respondent Noyes' Exhibit No. 3.)

Dickey would return, as of the hour when they were presented to him, the said Arthur H. Noyes. That this time was just prior to 6 P. M. That affiant then stated to the said Arthur H. Noyes that the code provided that such papers should be filed before they were presented and that said Arthur H. Noyes stated that that was all right, that he would fix that.

Affiant says that he then left the said Arthur H. Noyes and returned to his office, in front of which there was standing two wagons with drivers and men and a deputy marshal, all in waiting to proceed at once to Anvil Creek. That at said wagons affiant again saw the said Alexander McKenzie and delivered to the said Alexander McKenzie the orders signed by the Honorable Arthur H. Noyes as aforesaid, together with copies of summons,' complaints, etc., for service. That the said Alexander McKenzie told affiant that affiant had better go out to Anvil Creek with them. That affiant protested as to this at first but upon being urged finally consented and thereupon affiant and said Alexander McKenzie got into one of the wagons and proceeded to said Anvil Creek. Affiant says that on the way out to said Anvil Creek affiant had a conversation with the said Alexander McKenzie in which affiant stated to said Alexander McKenzie that affiant knew little of the merits of the case entitled Robert Chipps vs. Jafet Lindeberg and others, involving the title to placer claim known as Discovery on Anvil Creek, that in affiant's opinion the contention of plaintiff in said case was without merit and affiant would suggest

(Respondent Noyes' Exhibit No. 3.)

that the order appointing Alexander McKenzie receiver of said claim be not served until the following day. That affiant thought that Alexander McKenzie had no show whatever of winning that case, and that they had better go a little slow on it. That in reply to this said Alexander McKenzie stated to affiant that that could not possibly be done, inasmuch as the said Discovery Claim was the richest on said creek and worth all the balance put together, and that said law suit entitled Chipps vs. Lindeberg was worth all the other law suits and that he would not give a cent for any of the others except that one. That they must have that claim at all events.

Affiant says that thereafter affiant and the said Alexander McKenzie continued to Anvil Creek where said Alexander McKenzie had served all the orders upon the six several mining claims upon which he, said Alexander McKenzie, had been appointed receiver, in one instance taking the owner of said claim out of bed in order to serve said order upon him and put an agent in charge.

Affiant further says that a few days thereafter affiant was at a consultation with the said Alexander McKenzie in which the said Alexander McKenzie stated to affiant that said Alexander McKenzie had been told by the Judge to hire Dudley Dubose in said case, as he, said Judge, was informed that said Dudley Dubose was a leading mining lawyer in Montana and would lend considerable weight and assistance in the conduct of said litigation and that the said Alexander McKenzie had hired said Dudley Dubose as directed by the Judge.

(Respondent Noyes' Exhibit No. 3.)

That at a consultation had some time thereafter with the said Alexander McKenzie, said Alexander McKenzie stated to affiant that the said Alexander McKenzie had been instructed by the Judge, Arthur H. Noyes, to hire Thomas J. Geary in said case as attorney for the receiver and that the said Alexander McKenzie had hired said Thomas J. Geary in pursuance of said instructions.

Affiant further says that from the time of the appointment of said receiver as aforesaid up to the time of the arrival in Nome of the writs of supersedeas issued out of the Circuit Court of Appeals, affiant was present at a number of consultations with the said Alexander McKenzie, at which consultations there were present Thomas J. Geary, Dudley Dubose, Joseph K. Wood, and frequently the Honorable R. N. Stevens, United States Commissioner for the Nome Precinct, an appointee of the Honorable Arthur H. Noyes, and an attorney of his court. That said Wood and Stevens in said consultations consulted with the said Alexander McKenzie, and advised the said Alexander McKenzie in behalf of the plaintiffs in said cases and in the interest of said plaintiffs and of the said Alexander McKenzie, and it was well understood at all of said consultations that the interest of the said Alexander McKenzie and the interests of the plaintiffs in said cases were one and the same.

Affiant further says that the original orders signed by the Judge appointing the receiver on Anvil Creek claims, as aforesaid, did not comprehend nor include the personal property of the defendants, to wit, their tents, uten-

(Respondent Noyes' Exhibit No. 3.)

sils, sluice boxes and paraphernalia, but subsequent to the signing and execution of the first order affiant was approached by the said Alexander McKenzie and one Archie Wheeler, the private secretary and amanuensis of the Honorable Arthur H. Noyes and an attorney of his court presiding and officing in the chambers of the Honorable Arthur H. Noyes. That said Wheeler stated to affiant in the presence of the said Alexander McKenzie that the Judge had stated to the said Wheeler that the orders signed by him were not comprehensive enough so as to include and take in the boarding-houses and personal property of the defendants, and that the said Wheeler should go to affiant and have affiant prepare new orders more comprehensive than those originally signed. That affiant stated that in affiant's opinion the orders originally signed were sufficient and proper and that affiant did not have time to prepare other orders, and thereupon new orders were prepared and dictated in affiant's office by the said Wheeler, the private secretary of the Honorable Arthur H. Noyes, which said new orders were afterwards signed by the Honorable Arthur H. Noyes and filed.

Affiant further says that on another occasion when affiant made a motion in court that the Honorable Arthur H. Noyes spoke to affiant from the bench in a way which affiant could not reconcile from a partner and affiant went to Alexander McKenzie and stated to the said Alexander McKenzie that if affiant was in partnership with the Honorable Arthur H. Noyes affiant did not pro

(Testimony of W. T. Hume.)

pose to have Arthur H. Noyes speak to affiant from the bench in any such manner as affiant had been spoken to that morning. That said Alexander McKenzie stated to affiant that that would be all right and the incident would not be repeated, and later in the day said Honorable Arthur H. Noyes apologized to affiant and stated to affiant that the incident would not occur again.

Affiant further says that after the issuance of said order appointing the said Alexander McKenzie receiver as aforesaid, the defendants in said suits attempted to take an appeal to the Circuit Court of Appeals, which said appeal was denied by the Judge, Honorable Arthur H. Noyes, and that thereafter affiant learned that the defendants had filed their appeal or were intending to file their appeal in the Circuit Court of Appeals and affiant notified the said Alexander McKenzie that it would be necessary to have some attorney in San Francisco to look after the matter at that end of the line."

(At this hour of 12 M., the Commissioner, with the consent of counsel, ordered a recess to be taken until 2 P. M.)

Afternoon Session.

Present: The Commissioner, the official reporter, and counsel for the respective parties.

W. T. HUME, cross-examination resumed.

Mr. HENEY.—"Respondent Noyes' Exhibit No. 3" reads further as follows:

"That the said Alexander McKenzie thereupon stated to affiant that he would take care of that and that he would

(Respondent Noyes' Exhibit No. 3.)

send the Honorable James L. Galen, afterwards Commissioner of the Port Clarence Precinct, and brother in law of ex-Senator Carter of Montana, whose brother in law, ex-Senator Carter, would take care of the proceedings at that end of the line. That the said James L. Galen was thereupon despatched by the said Alexander McKenzie from Nome in pursuance to said arrangement, with a complete statement furnished by affiant of all the proceedings.

Affiant further says that about this time he was approached by Alexander McKenzie to sign an affidavit setting out that when the original papers were presented to the Honorable Arthur H. Noyes that said papers were presented to him in his chambers with the deputy clerk, C. E. Dickey, in the next room, and that they were presented to him, the said Arthur H. Noyes, at the time when the said Arthur H. Noyes was sitting in chambers. That affiant flatly refused to sign said affidavit stating to Alexander McKenzie that affiant could not sign said affidavit as it did not state facts and said Alexander McKenzie knew that it was not true and that Alexander McKenzie stated to affiant that Arthur H. Noyes had signed an affidavit to this effect. Affiant says that on the following morning he was approached by the Honorable Arthur H. Noyes and requested by said Arthur H. Noyes to sign a similar affidavit as the one presented to the said affiant by said Alexander McKenzie on the day previous. That affiant stated to the said Arthur H. Noyes that said affidavit did not set up the facts and affiant would not sign the same. That the said Arthur H. Noyes stated to affiant

(Respondent Noyes' Exhibit No. 3.)

at that time that he, said Arthur H. Noyes, had signed such an affidavit. Affiant further says that after this incident affiant was not consulted by the said Alexander McKenzie as frequently as before but the said McKenzie consulted thereafter Thomas J. Geary, Dudley Dubose, R. N. Stevens, Joseph K. Wood and Archie Wheeler, and left affiant practically out of his, said Alexander McKenzie's consultations, saving only to a limited and necessary extent, and affiant further says that affiant believes the reason of this was affiant's refusal to sign the aforesaid affidavit presented to affiant, all as aforesaid.

Affiant further says that affiant remembers the day of the arrival from San Francisco of the writs of supersedeas issued out of the Circuit Court of Appeals, commanding the said Alexander McKenzie to restore to the defendants the possession of the mining claims on Anvil Creek and the gold-dust extracted therefrom, and affiant says that on said day of arrival, which was just prior to the middle of September, affiant was called into consultation at the office of Alexander McKenzie on Steadman avenue in Nome to consult as to what should be done in the premises. That when affiant reached Alexander McKenzie's office, affiant found there present, Alexander McKenzie, R. H. Stevens, the United States Commissioner, Dudley Dubose, Thomas J. Geary, Joseph K. Wood, the district attorney, Archie Wheeler, the private secretary of Judge Arthur H. Noyes, and O. P. Hubbard. That the said parties aforesaid stated to affiant when he entered the room where said consultation was being conducted that they had been in consultation

(Respondent Noyes' Exhibit No. 3.)

for some time, and that the matter must be at once decided, inasmuch as the attorneys for the defendants had demanded a definite answer from the said Alexander McKenzie as to whether or not he would obey the writs of supersedeas by 2 P. M. of that day. Affiant says that upon affiant's entering the room where said consultation was being conducted as aforesaid, the writs of supersedeas which affiant had not up to this time seen, were handed to affiant and after affiant had read the same affiant was asked by the said Alexander McKenzie what he, affiant, thought of the said writs. Affiant says that affiant then stated that in his opinion the Circuit Court of Appeals had no jurisdiction to issue such writs, but that inasmuch as said writs had been issued under the seal of said Court that it was the opinion of affiant that it would be much safer to obey said writs of supersedeas and for the said Alexander McKenzie to do and perform the things therein commanded.

Affiant says that he then and there so advised the said Alexander McKenzie. Affiant says that affiant was the only person present who concurred in this view, and it was the general opinion among the other persons present that affiant was in error in affiant's opinion, and that the proper thing for the said Alexander McKenzie to do under the circumstances was to pay no attention whatever to said writs of supersedeas, but as some of counsel then and there expressed it to 'stand perfectly pat,' and that if the said Alexander McKenzie would so 'stand pat,' that this Court, meaning the District Court for the Second Division

(Respondent Noyes' Exhibit No. 3.)

of Alaska, presided over by Arthur H. Noyes, would sustain him. Affiant says that affiant cannot remember which of the attorneys present made the aforesaid statement nor can affiant at this time fix in his memory any specific statement having at that time been made by any specific attorney present saving and except that affiant knows that remarks and suggestionswere made by all the attorneys present contrary to the views held and expressed by affiant and that said remarks and suggestions were in substance and effect directions to the said Alexander McKenzie to pay no attention to the writs of supersedeas issued out of the Circuit Court of Appeals and to retain possession of said mining claims and of the gold-dust and to ignore the mandate in the supersedeas contained and to have the said Arthur H. Noyes protect him in so doing.

Affiant further says that some one present stated that the said Alexander McKenzie could not be forced to turn over said gold-dust unless Arthur H. Noyes so ordered him, which the said Arthur H. Noyes would not do and that the said Arthur H. Noyes had agreed to make an order prohibiting the said Alexander McKenzie from turning over said gold-dust as directed by the Circuit Court of Appeals.

Affiant says that those present who expressed views upon the subject and who advised the said Alexander McKenzie to disregard the aforesaid supersedeas and who agreed with the said Alexander McKenzie to support the said Alexander McKenzie in his disobedience of said writs of supersedeas before the District Court of the District of

(Respondent Noyes' Exhibit No. 3.)

Alaska, Second Division, were R. N. Stevens, Archie Wheeler, Dudley Dubose, Thomas J. Geary, Joseph K. Wood and O. P. Hubbard.

Affiant further says that after said consultation affiant talked with each of the attorneys present at said consultation, and warned said attorneys that they were likely to get into trouble over the action that they had taken in the premises, and affiant says that his views were ridiculed by said attorneys, some of whom stated to affiant that Nome was too far away from the Circuit Court of Appeals and that the said Alexander McKenzie was too big a man and could bring to bear too much political influence in case a row was raised in the premises. Affiant says that affiant at this time was unable to state which of the said attorneys made such statements to affiant, but affiant does say that each and every one made to affiant statements similar in substance and effect at various times between the time that the writs of supersedeas arrived in Nome and the time when the deputy marshals arrived later for the arrest of Alexander McKenzie.

Affiant says that on the 22d day of September affiant was taken ill with pneumonia and remained in bed for several weeks, and was only up and about a few days prior to the time of the arrival in Nome of the deputy marshals for the arrest of Alexander McKenzie, so that during this time affiant saw nothing of the said Alexander McKenzie. Affiant says that on the morning of the arrival in Nome of the deputy marshals with warrants for the arrest of Alexander McKenzie, affiant was in his office and was notified

(Respondent Noyes' Exhibit No. 3.)

that the said Alexander McKenzie was arrested and was over in the office of Thomas J. Geary and wished to see affiant; that affiant did not on said day visit said Alexander McKenzie for the reason that affiant had at this time about washed his hands of the whole procedure. That the next day affiant was called upon by the said Alexander McKenzie in affiant's office, who stated to affiant that he wished to consult affiant as to what he should do and how he, the said Alexander McKenzie, could get out of the trouble into which he had gotten; that the said Alexander McKenzie had followed the advice of Thomas J. Geary, Dudley Dubose, Joseph K. Wood, and R. N. Stevens in disobeying the orders of said Circuit Court of Appeals, and that they had landed him in jail, and that the said Alexander McKenzie had no further confidence in their judgment, and that the said Alexander McKenzie believed that said Thomas J. Geary, and Dudley Dubose were simply working him for a fee and that he wished to consult with affiant as to what he should do. Affiant says that he then stated to the said Alexander McKenzie that the affiant knew of no way in which he, the said Alexander McKenzie, could be gotten out of his difficulty. Affiant says that the said Alexander McKenzie then stated to affiant that Thomas J. Geary had prepared a petition for a writ of habeas corpus for his release which the said Geary had presented to the Honorable Arthur H. Noyes in the presence of Joseph K. Wood, which the said Thomas J. Geary and the said Joseph K. Wood had urged the said Arthur H. Noyes to grant, but that the said Arthur H. Noyes had fallen

(Respondent Noyes' Exhibit No. 3.)

down on him and would not grant the said writ of habeas corpus. Affiant says that later in the day affiant had a conversation with R. N. Stevens, the Commissioner, in which the said R. N. Stevens stated to affiant that the said R. N. Stevens had been consulted in the premises and that the said R. N. Stevens had advised the said Alexander McKenzie to petition him, the said R. N. Stevens, the Commissioner, for a writ of habeas corpus, and that the said R. N. Stevens would issue said writ, as he, said R. N. Stevens had no fear whatever in the premises. Affiant says that subsequent to the arrest of Alexander McKenzie and subsquent to the arrival of the writs of supersedeas, affiant had various and sundry conversations with Thomas J. Geary, Joseph K. Wood and Dudley Dubose, in which said conversations the said Thomas J. Geary, Dudley Dubose and Joseph K. Wood spoke most contemptuously and insultingly of the Circuit Court of Appeals and of Judges Gilbert, Morrow and Ross, stating that said Circuit Court of Appeals was corrupt and influenced entirely by the Southern Pacific Railway Company. That epithets were applied by said attorneys to the Judges of said court, which affiant out of decency does not care to repeat.

Affiant says that on the day the said Alexander McKenzie was arrested he had a conversation with Joseph K. Wood, district attorney, on the street of Nome, in which said conversation the said Wood stated to affiant that he had just called Alexander McKenzie away from the deputy marshals and had procured the keys from him to the boxes of the safety vaults where the gold-dust was on deposit.

(Respondent Noyes' Exhibit No. 3.)

That the said Joseph K. Wood had done this in order to prevent the said marshals from getting into said boxes or finding said boxes or the numbers thereof, and that the said marshals had demanded of him, the said Joseph K. Wood, the keys, and that he had declined to deliver them up, and that he, said Joseph K. Wood, would not deliver them up, and that the said Joseph K. Wood proposed to keep the said keys so that said marshals would not be able to find which boxes contained the gold-dust nor to open said boxes in case they should be located, and the said Joseph K. Wood stated to affiant that they, meaning he himself, the said Joseph K. Wood, Alexander McKenzie, R. N. Stevens, Arthur H. Noyes, and those interested in the Alaska Gold Mining Company were getting damned sick of the action of Judges Morrow and Ross, of the Circuit Court of Appeals, and that they would fix them, meaning Judges Morrow and Ross, as soon as Alexander McKenzie got on the outside.

Affiant further says that many other and similar threats to the last stated were made in the presence of affiant by Thomas J. Geary, Dudley Dubose, Joseph K. Wood and Archie Wheeler. That said threats, insinuations, and vile epithets were made so frequently and so often that affiant does not remember the specific occasions upon which the same were made.

And further affiant saith not.

W. T. HUME.

(Testimony of W. T. Hume.)

Subscribed and sworn to before me this 18th day of June, A. D. 1901.

LEWIS GARRISON,

Notary Public in and for the District of Alaska, at Nome."

Mr. McLAUGHLIN.—Q. Mr. Hume, in some of the cases at least, as I understand it, you were acting as attorney only nominally for some of the plaintiffs, and you understood from the commencement that McKenzie was the man who controlled the case, and interested?

A. No, sir.

Q. I understood you to say so. A. No, sir.

Q. You did not say so?

A. Not in the way you put it. McKenzie did not acquire the interest in a large number of these cases until after he arrived at Nome.

Q. It was your understanding that McKenzie had some interest in some of the cases?

A. He had Mr. Hubbard's interest when he arrived there, and none others.

Q. That was your partner's interest?

A. Yes, sir.

Q. In which you were interested yourself?

A. No, sir, my interest was separate.

Q. He had your interest, too, didn't he?

A. Not at that time.

Q. I understood you to say he acquired that in New York.

A. Mr. Hubbard had promised to deliver the interest of the firm. He had a third interest.

Q. Was it delivered?

(Testimony of W. T. Hume.)

A. I do not know. He told me it was.

Q. Was your interest delivered without your knowledge?

A. Delivered without affecting my interest?

Q. Without affecting your interest?

A. Yes, sir.

Q. Then, your interest never was delivered?

A. Not until Mr. McKenzie arrived at Nome.

Q. How soon after he arrived at Nome do you say that your interest was delivered to Mr. McKenzie?

A. I cannot state the date that Mr. Beeman and I transferred our interest. It was about the time of his arrival, after the conversations to which I have referred.

Q. Now, then, at the time that you commenced the action, Mr. McKenzie had acquired your interest in the litigation? A. Our contingent contracts?

Q. Yes, he acquired it, hadn't he? A. Yes, sir.

Q. And to that extent he was interested?

A. Yes, sir.

Q. And to that extent he was your client?

A. Yes, sir.

Q. As you understood it?

A. That is, he had our interest; he was not our client.

Q. Yes, of course; but from time to time he consulted you after that in relation to various matters.

A. Mr. McKenzie controlled and managed the whole affair after that.

Q. From time to time, subsequent to the commencement of the actions, he consulted you in relation to the matters pending? A. To some extent.

(Testimony of W. T. Hume.)

Q. And you advised him to the best of your ability?

A. Yes, sir.

Q. And being a lawyer, you naturally know of the sacred and confidential relations that exist between attorney and client, and that an attorney is never privileged to disclose communications made to him by his client. You were aware of that before you came on the stand, weren't you?

A. I am aware of that principle.

Q. Have you divulged any of the communications that passed between yourself and Mr. McKenzie?

A. No communications that affected the conduct of the business as my client. He was not my client.

Q. You say now he was not your client?

A. No, sir.

Q. But he consulted you, and you advised him?

A. He did not consult me as a client. My clients were the plaintiffs in the case.

Q. I understand that, I think. Have you been promised immunity from proceedings in this case, either by way of contempt or by way of any other prosecution, if you would testify?

A. I have received no promise of any nature relieving me of a prosecution for contempt, or any other prosecution to which I may be liable, if liable to any.

Q. Have you busied yourself in obtaining affidavits and furnishing information to the parties engaged in gathering testimony in this proceeding.

A. I have not.

(Testimony of W. T. Hume.)

Q. You have not busied yourself?

A. No, sir, I have not procured any?

Q. Have you obtained any?

A. I have not obtained any affidavits to be used in this prosecution.

Q. Have you suggested the names of parties who would or might make affidavits?

A. To whom do you mean?

Q. To anybody connected with the obtaining of that class of testimony.

A. There were very few people in Nome who were not prepared to make affidavits in this matter, and I have talked with a great many who were desirous of making affidavits, and who had information, and had suggested their names to Mr. Fink and Mr. Orton, but I never personally procured any affidavits nor solicited anybody to make any affidavits one way or the other.

Q. Mr. Reporter, read me the question. (The reporter reads the previous question. Do I understand you to say that you have, Mr. Hume?

A. I say in that way that I have. Persons have communicated to me certain things, and I simply meeting Mr. Fink and Mr. Orton, if they asked me if I knew of any person knowing the facts in reference to a certain case, I would say "Yes."

Q. You knew they were gathering this information, I suppose?

A. I did not know what they were doing. I knew they were very anxious to obtain any testimony they could obtain from reliable sources.

(Testimony of W. T. Hume.)

Q. They were no more anxious to obtain it than you were to furnish it?

A. Yes, sir, I took no interest in the matter whatever.

Q. And have no interest?

A. And have no interest.

Q. And you were on the best of terms with Judge Noyes?

A. Personally, I have nothing against Judge Noyes. Officially, from my knowledge of affairs there, I have the same feeling towards him that any attorney who desires to honestly conduct the law business has concerning an officer of whom he has the same opinion that I have of Judge Noyes.

Q. That is because of your exalted ideas of what honor is, is it?

A. It is on account of my knowledge of what I have suffered at the hands of McKenzie, Noyes, Wood, and that combination, for the last year, by being misled into making the one mistake of my life in going into this under misapprehension and getting out of it as soon as it was possible to get out of it.

Q. Still, you have no hard feeling?

A. I have no personal feeling against the parties—I have no ill-feeling towards Judge Noyes at all, although I think he has erred in a great many matters. I have no ill-feeling towards him.

Q. The feeling you have is entierly an official feeling?

A. My feeling is a feeling—

Q. (Interrupting.) It is an official feeling.

(Testimony of W. T. Hume.)

Mr. PILLSBURY.—Do not interrupt the witness.

A. I have no ill feeling.

Mr. McLAUGHLIN.—I am conducting this cross-examination.

Mr. PILLSBURY.—I have a right to make the suggestion that you are interrupting the witness.

Mr. McLAUGHLIN.—Certainly.

A. (Continuing.) I have no ill-feeling towards Judge Noyes, but Judge Noyes has been led to do a great many things through influences that have been brought to bear on him, which have caused me to feel that officially he has used his official position for corrupt purposes, through influences brought to bear on him. That is my feeling towards him, that he is not a proper officer.

Mr. McLAUGHLIN.—I move to strike out the answer as not being responsive to the question, and particularly upon the ground that the witness knows it is not responsive.

The COMMISSIONER.—The witness knows it is of record.

Mr. McLAUGHLIN.—Q. Mr. Hume, did Mr. Fink ever make you any promise that he would use his influence with Mr. Pillsbury to protect you from any contempt proceedings, or for statements made in the affidavit that you have just heard read; that there would be no proceedings, as far as you were concerned, in contempt proceedings, and there would be no prosecution

(Testimony of W. T. Hume.)

in the District Court or the Circuit Court of the United States for the Northern District of California? Did Mr. Fink ever make any promise to you of that character?

A. No, sir, he had no occasion to. There were no proceedings instituted against me that I knew of, of any character.

Q. You knew you had made an affidavit, didn't you?

A. I simply made an affidavit of the facts as I had related them to him.

Q. Now, you are volunteering all the time. You know that my questions demand an answer, and can be answered yes or no. As a lawyer, you know better than volunteering something that has nothing to do with the answer to my question. Please do not do that.

A. I will attempt not to.

Q. Did Mr. Johnson—I speak now of the firm, I think it is, of Fink, Johnson and Jackson—(after consultation with counsel)—I speak now of Charles S. Johnson, when I say: "Did Mr. Johnson make such a promise"?

A. No, sir, I never conversed with him upon the subject.

Q. Did Mr. Jackson? A. No, sir.

Q. Kenneth F. Jackson, I mean now.

A. I know who you refer to; no.

Q. The three men I have mentioned I think were the men who were gathering the testimony we have spoken of, weren't they?

A. I know nothing about that. I have only had two or three conversations with Mr. Fink on the subject.

(Testimony of W. T. Hume.)

Q. Did you not with Mr. Johnson? A. No, sir.

Q. Did you not with Mr. Jackson? A. No, sir.

Q. Did you say you had but two conversations with Mr. Fink?

A. Two or three conversations with Mr. Fink with reference to the procuring of testimony.

Q. And that at no time you suggested the names of persons? A. He asked me concerning cases.

Q. That was the time you gave him the names?

A. Yes, sir, the two or three times that I told him who the parties were who knew certain facts. He sought me out and asked me.

Q. Did you know of a letter written at least since the difficulties you have related happened, in relation to the writs of supersedeas—did you know of a letter written and signed by Mr. Fink, by Mr. Johnson, and by Mr. Jackson, addressed to Mr. Pillsbury at San Francisco, detailing the services that you had been to them in obtaining testimony, and that in view of that fact that they requested Mr. Pillsbury to use his good offices in preventing an investigation so far as possible affecting you, and also that no action might be taken by the Court for the Northern District of California. Did you know of such a letter; that such a letter was written?

A. I do not know that such a letter was written or whether it was not.

Q. If such a letter was written, was it written at your suggestion or dictation? A. No, sir.

(Testimony of W. T. Hume.)

Q. You never requested anything of that kind to be done?

A. I never requested, nor had any occasion to request. I never feared any prosecution for contempt or for any other offense. I never have committed any offense that I am aware of. I never sought any protection of any kind.

Q. Then you can conceive of no reason why the gentlemen mentioned should write such a letter, if it was written?

A. If it was written, I perhaps can conceive of the reason. I know, and I can give you my reasons.

Q. You say you do not know that it was written?

A. I say I can conceive of a reason, if it was written.

Q. You did not suggest any reason?

A. I did not, but I know of a change in the atmosphere and circumstances at Nome which may have satisfied these gentlemen that they had misjudged me in the summer of 1900, and if any proceedings were instituted, or attempted to be, perhaps that was the object. I do not know. I never suggested it. I know there was a very great change in sentiment concerning myself and my position in regard to these affairs during the winter of 1900 and 1901. Perhaps they understood it.

Mr. McLAUGHLIN.—I think at his point, Mr. Pillsbury, I shall ask you whether you received a letter from the gentlemen mentioned, of the character of the letter that I have described, and if you have, will you produce the letter?

(Testimony of W. T. Hume.)

Mr. PILLSBURY.—If I have any such letter, I will advise you. I will look over my correspondence.

Mr. McLAUGHLIN.—You have no recollection at this time of receiving such a letter?

Mr. PILLSBURY.—I have no specific recollection; no, sir. If there has been any communication that you are entitled to that is in my possession, you shall have it, if it is proper to be presented.

Mr. McLAUGHLIN.—I will say this: In view of the importance that I regard the letter, if you do not find it in your files, will you look over your correspondence; I mean the press copy, and see whether it was not sent, either the letter itself or a copy of it, to Washington.

Mr. PILLSBURY.—Not by me. I can answer about that. Not to my recollection, since these proceedings were initiated, have I had any correspondence with either of those gentlemen. I certainly never forwarded anything to Washington. I can answer that unequivocally. I never participated in any proceedings in Washigton.

Mr. McLAUGHLIN.—So, if you received such a letter, it is likely to be in your files?

Mr. PILLSBURY.—If I received such a letter, it is in my papers, unless it has been lost, but I am certain that I never had any correspondence with either of those gentlemen upon that subject.

(Testimony of W. T. Hume.)

Mr. McLAUGHLIN.—The letter that I refer to is a letter that is signed by Mr. Fink, by Mr. Johnson, and by Mr. Jackson, each one signing individually the letter.

Mr. PILLSBURY.—I had some correspondence with Mr. Jackson and Judge Johnson, when I was acting in connection with those appeals, but I never had any correspondence with them since the contempt proceedings were initiated. Of that I am certain. I will state in this connection, Judge, at one time I received some papers by private conveyance, and was advised that duplicates had been sent by mail. They were never received by mail, and I made some inquiry about it, and the information given to me was that they had probably been stolen at Nome or on the road. I recall that now, and that these were papers that were sent by private conveyance to me.

Mr. McLAUGHLIN.—I do not know how they came.

Mr. HENEY.—The original of this letter is now on file at Washington, and that could not have been lost in the mail.

Mr. PILLSBURY.—It might have been taken from the mail and sent to Washington.

Mr. HENEY.—By somebody in the interest of Judge Noyes?

Mr. PILLSBURY.—I do not know who did it. I know I never sent a paper to Washington of any character.

(Testimony of W. T. Hume.)

Mr. McLAUGHLIN.—It is a curious fact that the affidavit just read is on file, or a copy of it, at Washington. It did not walk there.

Mr. PILLSBURY.—If it is, it got there without my knowledge or instrumentality That is all I can say about it. I am not interested myself in any proceeding at Washington, and do not propose to.

Mr. McLAUGHLIN.—Evidently somebody has.

Mr. PILLSBURY.—It is as much as I want to do to look after this part of the proceedings.

Mr. McLAUGHLIN.—Q. You say that when you came to San Francisco, you were advised to call on Mr. Pillsbury? A. I was advised before I came here.

Q. I understood you to say that when you came here you were advised?

A. I say, as I was advised, I went to see Mr. Pillsbury. When the subpoena was served on me, I was requested to call on Mr. Pillsbury as soon as I arrived in San Francisco.

Q. That is what you mean when you say you "were advised"? A. I was advised to call on him.

Q. Were you advised by anyone else to call on him?

A. That was all; at the time the subpoena was served.

Q. Did Mr. Metson make you any promise in regard to immunity? A. Mr. Metson has not.

Q. From prosecution or investigation?

A. No, sir.

(Testimony of W. T. Hume.)

Q. To state it broadly, as I understand it, you say that nobody made you any promises of immunity?

A. I have received no promises of immunity to procure my testimony or the affidavit.

Q. Well, have you received promises of immunity at all without reference to your testimony?

A. From no person.

Q. Up until this time?

A. I have received no promises of immunity at all. As I said, I had no occasion to solicit them. I had no fears that I was subjecting myself or had committed any act subjecting myself to prosecution of any kind.

Q. Still, you were of opinion that the writ of supersedeas was void? A. I am not now.

Q. You were then?

A. I probably expressed myself as having some doubts on that subject.

Q. Did you not express yourself as having no doubt about it at all, and did you not advise at the meeting that you had, where you met the gentlemen, Mr. Geary and the others, that the writ was void, but that if it was void, that the proper course to pursue would be to contest it at San Francisco? You thought that was the way to contest a void writ, although you thought it void, and you expressed that, did you not? You have changed it since, of course.

A. I expressed an opinion of that character in the conversation there, but not in the sense as you would put it, as legal advice.

(Testimony of W. T. Hume.)

Q. Well, I cannot follow you as Mr. Hume, as a person and as a legal adviser.

Mr. PILLSBURY.—Q. Just state the circumstances, Mr. Hume.

Mr. McLAUGHLIN.—Q. Dr. Jekyll and Mr. Hyde change fast, but I am not able to follow this change.

A. The circumstance at Nome at the time of the arrival of these writs can hardly be appreciated by a person who was not present. Conversations were had on the streets, in the office, in saloons, in the courtroom, and in Mr. McKenzie's office, and nearly every person was discussing the matter in the town. And, as I say, at Mr. McKenzie's office, when I was called there for the first time, I had not, prior to that time, been advised with nor consulted for some time to any great extent. I was called in, and these gentlemen were discussing the matter. They asked my opinion in an offhand way. I glanced at it and said I did not believe the Court had jurisdiction, or that the writ might be void, or something of that kind, but expressed no legal advice as to what course to pursue, or what steps to take, excepting that I said if it was void, the only thing to do, as I could see, was to make our fight here in San Francisco, before this Court, and to obey it at the time.

Q. If it was void, you thought a fight ought to be made in San Francisco? Did you give that as the opinion of a lawyer, or simply as the opinion of an individual?

A. It was not an opinion; it was the expression of a

(Testimony of W. T. Hume.)

sentiment at that time, but not a legal opinion. On a proposition of that kind, a man would not give a legal opinion offhand. It was a sidewalk opinion.

Mr. McLAUGHLIN.—That is all, I think, I have to ask the witness.

The WITNESS.—I desire to make a statement in order that I may be cross-examined in view of the testimony that I gave yesterday, in order that I may be cross-examined if desired. In thinking over my testimouy last night, I thought I did not make it clear, or at any rate I did not care to be misrepresented or misconceived in what I intended to state. In speaking of the fact that Judge Noyes, in making the order, acted corruptly, I do not mean to say that the appointment asked for was my reason for judging that he acted corruptly, but that the appointment or action or order made by him brought about, irrespective of the right or wrong of the application by influence other than contained in the application, made his action, in my opinion, corrupt as a Judge. My testimony, in thinking it over, left me as saying that I thought he was corrupt because the appointment was made, or an action or order was made. This opinion of mine is based, not only upon the incidents referred to, but many others which occurred during the years 1900 and 1901, and actions and orders made in other cases besides those to which I referred in my testimony yesterday. I also desire to state, as explanatory of my testimony given yesterday—

(Testimony of W. T. Hume.)

Mr. McLAUGHLIN.—Q. (Interrupting.) Now, Mr. Hume, will you permit me to ask a question so that I may understand? You are not explaining, or undertaking to explain now, any part of the cross-examination that has been so skillfully conducted in Mr. Pillsbury's interest—

Mr. PILLSBURY.—(Interrupting.) In my estimation, you mean?

Mr. McLAUGHLIN.—Q. (Resuming.) But you are explaining now your own testimony? A. No, sir.

Q. What are you explaining?

A. In your cross-examination, my recollection of the testimony, by your question and the answer given to it, my answer does not convey what I intended should be my testimony, or what I intended should be communicated as the true situation. I desire to make this statement in order that it might be taken in conjunction with the answer I have given, so that no misconception or misrepresentation may be made as to just what I intended to say.

Mr. PILLSBURY.—Q. That is, concerning something that has come out on cross-examination?

A. Upon cross-examination.

Mr. McLAUGHLIN.—Q. I want you to call my attention to the cross-examination that you are going to explain now.

A. I desire to explain with reference to the cross-examination as to your question concerning me, as to whether or not I did not fear disbarment proceedings on

(Testimony of W. T. Hume.)

account of consenting to the proposition made by Mr. McKenzie in agreeing to his proposition and consenting to this arrangement which would influence Judge Noyes. My answer to that is not as clear, according to the facts, as I deem that I should place it on my own account.

Q. Have you read your answer?

A. I have not read my answer nor my testimony, and I make this statement now from my recollection of just what the testimony was and the impression that I have with me. I could make it after reading the answer, but I thought it was only fair to you to make it now so that I could be cross-examined. I can leave it until I read the testimony, if you prefer. I can then make an addition to my statement.

Q. I understand you have not read it at all. It is only a recollection of what the answer was.

A. I have a pretty distinct recollection of my testimony. I can wait until I read it, and make my correction then, if desired. I reserve that privilege.

Mr. PILLSBURY.—I suggest, if there be any additions or explanations made, that they be made now, and go into the record. In reading over the testimony, it is not expected that a witness will add any explanation to it.

Mr. McLAUGHLIN.—In view of the fact that Mr. Hume suggests that it is in fairness to us, and that he has made no explanation so far, I suppose we have no objection.

Mr. PILLSBURY.—Q. State it.

A. I have made a partial explanation, but the explan-

(Testimony of W. T. Hume.)

ation as I recollect it did not place the matter as I would like to have it presented to the Circuit Court of Appeals as what I intended to testify to.

Q. State it now.

A. I desire to say that at the time that I acquiesced and agreed to Mr. McKenzie's proposition, I did so because it was the only resort to protect the interests of my clients, and I did not at that time anticipate or realize the entire scope of Mr. McKenzie's scheme and within a short time, three weeks, or between three and four weeks, when I could discover or become aware that matters were being conducted in such a manner as I could not approve, and that I was not in sympathy with, I then demanded to be relieved of all connection with the matter, and practically did retire from the active participation in any affairs except the straight trial of actions in the court on the trial docket. As soon as I realized the situation that I had got myself into, and it did not meet my personal approval, I practically retired, and desired to be openly retired from any connection with Mr. McKenzie, Mr. Noyes, or any of their combination.

Q. Is there any other matter that you wish to explain?

A. In listening to the affidavit that was read and handed to me this morning to which my signature was attached, I think I made the statement that the affidavit was untrue. I desire to correct that to the extent that there are some facts stated in the affidavit which are true. There are many facts stated in the affidavit which are

(Testimony of W. T. Hume.)

untrue, and at the time the affidavit was presented I desired to make an explanation as to why it might have been possible that my signature was obtained without my knowledge to this paper, that is, without my knowing the exact contents. As to the affidavit, "Noyes' Exhibit No. 1," I simply desire to state, as a further answer to the question as to whether I signed it, that at the date that this appears to have been signed, that is, the 20th of October, the steamers were leaving, and I was carrying the burden of the office, and was required to sign many papers without examination. That paper, I know that I never signed, knowing the contents of it. My signature might have been obtained as it was to many other papers, stipulations and other papers in my office, without my having read the contents, as I never have stated to any person the matters set out in that affidavit as having been true, and never signed it knowingly. I may have signed it at the request of Mr. Hubbard, or my stenographer, or some person in whom I had confidence, believing it was some other paper. In the affidavit made before Garrison, there is an error that was overlooked at the time of the signing which states that McKenzie and Hubbard arrived on the 21st, Saturday. That was an error probably of the typewriter, and was overlooked in signing it, because they unquestionably arrived on Thursday, and not on Saturday. As to the statement in the affidavit signed in June, wherein I stated that I had never seen Judge Noyes until I presented the paper to him in the Golden Gate Hotel, my recollection since

(Testimony of W. T. Hume.)

making the affidavit has been refreshed to accord with the testimony I have given, that he was pointed out to me on Saturday, the day he arrived. At the time I made the affidavit, I did not recollect that circumstance, but since making the affidavit and talking with the gentleman, he refreshed my memory that he had pointed Judge Noyes out to me on the street; therefore my memory here is different from the affidavit. At that time I did not remember it. I desire to make that statement in order to correct any discrepancy that might appear to be between my statement here and the affidavit.

Q. Is there anything more?

A. I think that is all, except the circumstances concerning the July affidavit.

Q. I will ask you about that by and by.

Mr. McLAUGHLIN.—Q. Mr. Hume, I want to ask you a question. I wish you would look at that affidavit, and look at the signature of John T. Reed (handing "Respondent Noyes' Exhibit No. 1" to the witness).

A. Yes, sir.

Q. Are you familiar with his handwriting?

A. Not sufficiently to identify his signature.

Q. You could not say whether it is his signature or not?

A. No, sir; I have seen him write, but I am not sufficiently familiar with it to identify his signature.

Mr. McLAUGHLIN.—That is all.

(Testimony of W. T. Hume.)

Redirect Examination.

Mr. PILLSBURY.—Q. Now, Mr. Hume, be kind enough now to point out the portions of that paper which you say are not true, the matters therein stated.

A. That portion of the affidavit wherein it states that I sought Mr. Borchsenius, the clerk of the court, and inquired at his office and at the place at Nome where Borchsenius was liable to be found, or that I received information which satisfied me that Borchsenius was concealing himself; and that portion of the affidavit which states that I had sought Charles E. Dickey at the office of the clerk of the court, and with reference to my being directed to the Golden Gate Hotel by the clerk of the court, or at the office of the clerk of the court and that portion wherein it states that I was directed to the room occupied by Dickey, and that I repaired to the room and knocked at the door, and was informed that Dickey was not there, or was directed by a man who was in the room to knock at the adjoining room, or that I knocked at the door and that Arthur H. Noyes came to the door; and that portion of the affidavit which states that Judge Noyes told me to go with him to the Judge's chambers in the Herschler Building, and that they—Judge Noyes, I suppose it means—that they repaired to rooms in the Herschler Building then occupied by the Judge and the clerk, and that I presented the complaints, together with the affidavits used on the original motion for the appointment of receivers, or that any of the matter stated in the affidavit

(Testimony of W. T. Hume.)

occurred in the Herschler Building. The statements contained in the affidavit with reference to the conversation had between myself and Judge Noyes may or may not be true, as I do not recollect all the details of the conversation had; and that the time stated of reading the affidavits and complaints is not an hour as stated in the affidavit.

Q. To the best of your recollection, what was the time that you spent in reading them?

A. It was between thirty and forty minutes from the time I left my office until I returned to my office; it was between thirty or forty minutes; it might have been forty-five minutes.

Q. Now, run your eye over the rest of it, and mention anything else that you wish.

A. It is not true in the affidavit that I left the papers I handed to Judge Noyes on the table in the room occupied by the clerk or the judge. I think those are substantial statements of fact which are not true according to the fact.

Q. Who was John T. Reed?

A. John T. Reed was, as I understood from his official position, private secretary and confidential clerk and adviser of Judge Noyes, and clerk in his court, or the clerk who occupied the desk in his courtroom?

Q. What you call a courtroom clerk?

A. A courtroom clerk, and confidential clerk.

Q. How long has he been in that position up there?

(Testimony of W. T. Hume.)

A. He was there off and on during the summer, in and around the office.

Q. You mean the summer of last year?

A. The summer of 1900. The latter part of the summer of 1900, I noticed him first. I did not get acquainted with him until later on. He occupied a position in the clerk's office, and as the confidential man of Judge Noyes, until some time in the winter of 1900 and 1901, when he made a trip over the ice, I think it was in January or February, 1901. He made a trip over the ice outside, to Washington, as I understood, and returned this summer, in the early part.

Q. How did he come to go to Washington?

A. I only know from hearsay.

Mr. McLAUGHLIN.—Do you insist, Mr. Pillsbury, on getting out hearsay testimony all the way through?

Mr. PILLSBURY.—No. I am asking him if he knew.

Mr. McLAUGHLIN.—He is simply stating hearsay testimony, even up to the journey. You do not want that.

Mr. PILLSBURY.—That is a fact. He would not have to go along with him to know about it.

Mr. McLAUGHLIN.—Not at all.

A. That is only from hearsay. I know nothing about the arrangements, except by hearsay, as to what he did.

Mr. PILLSBURY.—Q. Who was Mr. Reed? Where did he come from?

A. He came there in the summer of 1900. Where he came from, or who he is, I have no knowledge.

(Testimony of W. T. Hume.)

Q. You say he succeeded a man by the name of Dickey in the clerk's office?

A. Dickey was removed, Whether he succeeded him or filled his position, I do not know. Dickey was removed during the fall of 1900, and Reed came into the office; that is, I noticed him come into the office about that time. Whether he had been in the employ of the Government prior to that time, I do not know.

Q. Do you know whether he was a deputy clerk on the 20th day of October, 1900?

A. He was acting in that capacity, I think. I am not sure. I do not know whether he was appointed or not.

Q. How long were you with Judge Noyes when he signed those orders in the room?

A. As I stated before, I left my office between 5 and half-past 5, and I think nearer half-past 5, and went direct to the Golden Gate Hotel. I could not have been in the room more than from fifteen to twenty minutes. I was from thirty to forty minutes from the time I left my office and went to the hotel and got back to my office.

Q. This paper, "Exhibit No. 2," that is acknowledged on the 15th day of July, I will ask you to look at, and state the circumstances under which you gave that affidavit.

A. Shall I state all the circumstances leading to the reason why I gave this affidavit?

Q. Yes; to whom it was delivered.

A. In the fall of 1900, I began an action or a suit in equity on behalf of H. L. Blake against Lindeberg, Lind-

(Testimony of W. T. Hume.)

blom, Holtberg and others. That involved a grub-stake contract, and we applied for a receiver to receive the net interests arising to the defendants pending the litigation; at the time that this receiver was applied for, Alexander McKenzie demanded that Blake, as well as our firm, should turn over to him all our interests in the Blake case, and that he should be receiver in that case. I refused to comply with his request, and refused to further affiliate with him, or have anything more to do with his concern, in the latter part of August.

Mr. McLAUGHLIN.—Q. This was August, 1900?

A. This was August, 1900. I was informed then by Alexander McKenzie that unless I consented and Blake consented to turn over to him and his company all of our interest in this litigation, and consent that he be appointed receiver, I would have no receiver appointed, and I would never be able to try that case before Judge Noyes. I refused, and my client refused, to concede or acquiesce in his demands, and it was about the beginning of the time that I attempted to relieve myself of my connection with McKenzie or these people. From that time on, although persistent in endeavoring to get demurrers heard to the complaint and a hearing upon the application for a receiver, I never was able to have a hearing at the hands of the Court for quite a while, and then it was taken under advisement.

Mr. PILLSBURY.—Q. About what time was it taken under advisement?

(Testimony of W. T. Hume.)

A. I will not state the exact time; some time in the month of September or October. It was after numerous efforts on my part to have a hearing.

Q. That was September or October, 1900?

A. September or October, 1900. At the close of navigation I was informed—but that is hearsay. At the close of navigation, I retired as attorney in the matter, and it was demanded that I should make and execute a deed of all the interests of the firm of Hubbard, Beeman & Hume, and myself, to a gentleman in Nome, who should hold it as trustee, and if I did that, the case of Blake vs. Hagelin, and others, would then proceed, and the demand was of the Judge of the court that I should absolutely retire from the trial of this case and all interest in it; otherwise the case would not be heard. I retired. I deeded all the interest we had, withdrew from the case, and substituted A. J. Bruner as attorney in my place.

Q. That is the notary who took this affidavit?

A. That is the notary who took this affidavit. From that time on I had no further connection with the case of Blake vs. Hagelin, and did not participate in it in any manner. The demurrers were heard, and I think one sustained and one overruled. On or about the 15th day of July, 1901, just prior to that time, a demurrer had been argued to the complaint which involved the essence of the case, and on this day, the 15th day of July, the announcement was made that the decision would be had that morning in the Blake-Hagelin case, and it was continued over until 2 o'clock in the afternoon. At the noon recess, Mr. Bruner called me into his office and stated that unless I made an

(Testimony of W. T. Hume.)

affidavit that Judge Noyes was not corrupt and that he was an efficient officer, and that I had no reason to believe but that he was competent and efficient, and knew nothing in the world against him, that he would decide this demurrer against Blake, and that I must make the affidavit. I told Mr. Bruner that I would give Judge Noyes a quitclaim deed to everything I had in Alaska, but I would not make that affidavit. Mr. Bruner and his clients demanded that I should make some affidavit, that anything would satisfy Judge Noyes; that they heard I was subpoenaed as a witness, and they demanded an affidavit, or else they would be sacrificed and the demurrer would be sustained. Finally, after refusing for some time, Bruner said, "Sit down and write out what you will swear to." I sat down and wrote out this affidavit, which, at the time I signed it, was true. That affidavit was taken to the courthouse at about half-past 1 o'clock, and at 2 o'clock the demurrer was overruled, and it was on that affidavit. The affidavit was handed to Judge Noyes prior to—but that is hearsay, and I will not state it. The affidavit was signed about half-past one on the 15th day of July, and at 2 o'clock the demurrer was overruled. That affidavit was true, irrespective of the statements made by Mr. McKenzie. I had no information that Judge Noyes had received any pecuniary or money consideration for any decision, or that he had asked any money or pecuniary consideration. That is what I swore to, and that is all that that affidavit states, reserving whatever McKenzie may have said to me in regard to the subject.

(Testimony of W. T. Hume.)

Q. You were asked upon cross-examination as to your opinion or information as to Judge Noyes' character; whether it was corrupt or not, and you stated certain things.

A. Character or reputation?

Q. Or his official acts. State any other acts that came to your knowledge upon which you based the opinion that you gave. I mean any observations of what took place before him, as a Judge.

Mr. McLAUGHLIN.—You want to get his opinion now.

Mr. PILLSBURY.—No; I am asking him to state his observations which led him to the conclusion.

Q. I will ask you if this proceeding was one of the things which you had in mind, Mr. Hume?

Mr. McLAUGHLIN.—I assume that you will permit the witness to answer without leading him.

Mr. PILLSBURY.—On redirect examination, I can bring his attention to certain things. (Addressing the witness.) I will ask you if you had this in mind.

Mr. HENEY.—You cannot lead any more on redirect examination than you can on direct examination.

Mr. PILLSBURY.—Q. Go on in your own way, Mr. Hume, and answer the question.

A. I can state what came to my personal observation.

Q. That is what I ask you to do.

A. In the case of R. J. Park vs. Lee Overman, the case of Osborn vs. Fritz, the case of Ring vs. Yager, the case of some person whose name I have forgotten, against Charles

(Testimony of W. T. Hume.)

E. Hoxsie, involving the right of possession on Extra Dry Creek, those matters came directly under my personal knowledge.

Q. State what you observed on which you based this opinion.

A. In the case of Park vs. Overman, I was attorney for Mr. Park, against Lee Overman for the possession of a piece of property known as the City Bakery.

Q. That is in the city of Nome?

A. In the city of Nome.

Mr. McLAUGHLIN.—Q. Give us the date of it.

Mr. PILLSBURY.—Q. Yes, give the dates as near as you can as you go along.

A. The case, which was one of forcible entry and detainer, was began in—no, it was an action for possession of the property, began in 1900 by my partner. I represented Mr. Park. We were unable to get the case tried.

Mr. McLAUGHLIN.—Q. What time in 1900?

A. In the fall of 1900, after the arrival of the Court. I will not give the exact date. The case was at issue along in September or the first part of October. Soon after navigation closed. We could not get the case to trial. I was notified that if I should withdraw from the case, and another gentleman should appear in the case —

Mr. McLAUGHLIN.—Q. (Interrupting.) You say, Mr. Hume, you do not want to give us any hearsay testimony. It is quite apparent that you do not. You say you were notified. Who notified you?

(Testimony of W. T. Hume.)

A. I was notified by my client, Mr. Park, that unless I retired from the case, he could not win the case or the case be tried, and unless Mr. M. J. Cochrane was employed that he would lose the case. I retired from the case. Mr. M. J. Cochrane was employed, and the case was decided in favor of Park.

Mr. PILLSBURY.—Q. How soon was the case tried after this change?

A. It was tried immediately. It immediately went on for trial. It was only a short time after the change was made before the case was tried, and then the case was held under advisement, I think, for a few days. In the meantime Mr. Oochrane was appointed United States Commissioner for Kongorok mining district, and the case a few days afterwards was decided in favor of Park. Lee Overman in the meantime, pending the hearing, had spent $3,000, or a large amount of money, in the improvement of the property, and about the time the improvement was made, the Park property was taken from him on the execution in the Park-Overman case. There are many circumstances which came to me from hearsay, not under my actual knowledge, concerning that case, which aids me in coming to my conclusion, which I have not testified to.

Mr. McLAUGHLIN.—Q. Have you not testified that Park told you these things? You do not regard that as hearsay? A. You asked me who said that.

Q. And you said Park? A. Yes, sir.

Q. That is hearsay, too?

A. Yes, sir, to that extent.

(Testimony of W. T. Hume.)

Q. Then it is all hearsay?

A. I observed the results.

Mr. PILLSBURY.—Q. That is what I am getting at.

Mr. McLAUGHLIN.—Q. Mention the results.

A. In the Bergstrom-Plough case, I was attorney for Mrs. Plough. The verdict of a jury was rendered against me. The motion for new trial was argued by me and overruled by the Court. Shortly after that Mr. Joseph K. Wood appeared in court and argued my case for me on motion for new trial before Judge Noyes. Hearing of it, I interrupted proceedings, I think that afternoon or the next morning, calling attention to the fact that I was the attorney in the matter, and my client had not solicited other attorneys to appear. My client then made arrangements with me. The case of Bergstrom vs. Plough was turned over to Joseph K. Wood and his associates, and whether they have been able to make satisfactory settlement or not, at this time I do not know the conditions, without stating what was stated to me concerning the matter, and the reasons for retiring. Those, of course, entered into my consideration as to the action of the court in that matter, and that was hearsay.

Mr. PILLSBURY.—Q. Did the Court take any action in the case after that?

A. The Court required my client to get my consent to have Mr. Wood appear and make arrangements with me. I acquiesced in the arrangements, from the statement made by my client to me, and withdrew in favor of Mr. Wood, and substituted him as attorney, as I did also

(Testimony of W. T. Hume.)

in the case of Carrie Plough vs. Madge L. Wood under the same circumstances.

Mr. McLAUGHLIN.—Q. Is that another case?

A. Yes; Carrie Plough vs. Madge L. Woods and Madge L. Woods vs. Carrie Plough. It was a cross-action. I was attorney for Carrie Plough. I retired from that case also, and substituted Mr. Joseph K. Wood, on representations made to me by my client, which entered into my consideration in giving my opinion in the testimony yesterday.

Mr. PILLSBURY.—Q. What action was taken by the Court, if any, after those charges were made? You say in the case you mentioned, you made a motion for a new trial, and it was denied. Was there any change or any proceeding after the change of attorneys?

A. I could not state just what took place at that time. The matter, I think, was forced to a settlement. In the case of Madge L. Woods vs. Carrie Plough, the verdict was rendered in favor of Carrie Plough and against Mrs. Woods. Mr. Wood held a deed to half of the property—Mr. Joseph K. Wood. I had cause to attach the property, and that is how I know that fact. The circumstances surrounding my retirement, and the representations made to me by my client, were also considered by me in arriving at my judgment, and the result coming as predicted.

Q. What result?

A. The result of the case being won by Mrs. Plough, instead of being lost as it otherwise would have been.

(Testimony of W. T. Hume.)

Mr. McLAUGHLIN.—Do you insist, Mr. Pillsbury, that this man shall go on and testify in this manner, and give hearsay testimony when you ask for observations?

Mr. PILLSBURY.—I do not consider it as hearsay. I ask him to say what he observed in the conduct of the Court. That is what I am asking him now. I suppose it is perfectly legitimate, if the Court had taken one position, and then there was a change of attorneys, and he took another position. I think it is perfectly proper that that should come out.

Mr. McLAUGHLIN.—What conduct has he testified to?

Mr. PILLSBURY.—I am not discussing that. We will discuss that when we get before the Court.

Q. Go on and state anything else.

A. I will state that Mr. Wood was in constant consultation with the Judge, and at the time these occurrences took place with reference to the Plough case. In the case of Osborn vs. Fritz, a forcible entry and detainer action was begun in July, 1900, which was decided in favor of Osborn in the early part of August—no, which was set for trial in the early part of August. The plaintiff in the case and his attorneys were enjoined from a trial of the action upon a petition filed in the District Court, and that injunction was issued in two cases, Osborn vs. Fritz and Osborn vs. Hayner and Gibson. In Osborn vs. Fritz, along in September, the Court heard the injunction, and dissolved the Osborn injunction. The other injunction was not dissolved. In the spring—

(Testimony of W. T. Hume.)

Mr. McLAUGHLIN.—Q. Let me interrupt you. I think you have not stated what your connection was in the last case at all.

A. I was attorney for Osborn in both cases.

Q. Who was attorney for Fritz? You might as well give us that, too.

A. Fritz had no attorney, but Mr. Geary and Mr. Sullivan represented Star and Gerney, who were defendants.

Q. Go on now, if you please.

A. The case was pending on the docket on appeal, and we were unable to obtain a trial of the case until along in the spring, when Star and Gurney took forcible possession of the premises from the tenant that they had leased the property to. At the time they took forcible possession of the premises at the point of a gun. We applied to Judge Noyes for a mandatory injunction to restrain them from interfering with Mr. Getzendaner in the premises. Judge Noyes declined to issue any injunction or restraining order. We applied to the marshal for protection. He sent an officer there to hold the matter in statu quo so that no lives would be lost. We then applied to the military authorities, setting out in an affidavit the condition of affairs, and the military authorities declined to act on account of it being a civil matter and under the jurisdiction of Judge Noyes. My clients then at that time, or two or three days after that, took possession of the property away from Star and Gurney by force, and Judge Noyes cited us to appear before him to show

(Testimony of W. T. Hume.)

cause why we should not surrender possession of the property on account of the interference with the appellate jurisdiction of that court, and excluded Getzendaner from the hearing of the matter, refusing to allow him to intervene, he being a tenant. After argument of the matter, Mr. Wood, Mr. Sullivan, and Mr. Bell, the clerk of the court at that time, being attorney for the parties Star and Gurney, and Judge Noyes' private and confidential clerk—

Mr. McLAUGHLIN.—Q. (Interrupting.) Who is that?

A. Mr. Bell; he was acting as Judge Noyes' confidential clerk in the absence of Mr. Reed, and was attorney for Star and Gurney. We were cited to appear, and my clients were put out of possession, and the property turned over to Star and Gurney, after the building had been largely improved and considerable money expended by one of my clients, or one who had been my client, but had sought other counsel at that time, Mr. Fritz. From what I knew outside of the bald record as I have given it to you, from statements of Mr. Fritz, Mr. Howser, and other persons, and the conduct of Mr. Bell, I also considered those statements, which are hearsay, in arriving at my conclusion to which I testified yesterday. In the Ring-Yager case, Mr. Yager was the original locator of a mining claim, No. 7 of Gold Run Creek. The claim was jumped by Herman Ring. An action was begun by Yager while in possession by Herman Ring.

Q. Were you interested in this case as attorney?

A. I was, as Yager's attorney, and one of his grantees,

(Testimony of W. T. Hume.)

having received a deed to an interest in the claim for my services. Mr. Ring, on the day that he began his action, transferred a quarter interest in the claim to James L. Galen, United States Commissioner at Port Clarence.

Mr. PILLSBURY.—Q. Appointed by whom?

A. Appointed by Judge Noyes—who held it in trust for R. N. Stevens, United States Commissioner at Nome.

Mr. McLAUGHLIN.—Q. Are you now stating the contents of papers?

A. I am stating the testimony given on the witness stand under oath, and the record evidence on file in the United States Circuit Court of Appeals as well as in the United States District Court for the District of Alaska.

Mr. PILLSBURY.—Q. Who was Mr. R. N. Stevens?

A. United States Commissioner at Nome.

Q. Appointed by whom?

A. Appointed by Judge Noyes.

Q. Go on.

Mr. McLAUGHLIN.—I want to ask another question.

Mr. PILLSBURY.—You can re-examine him.

Mr. McLAUGHLIN.—Don't you think I have a right to know where he got his information from?

Mr. PILLSBURY.—You have no right to interrupt the witness.

Mr. McLAUGHLIN.—Q. Are you stating the contents of written documents, or are you stating your recollection of testimony adduced in open court?

(Testimony of W. T. Hume.)

A. I am stating what I observed with my eyes of documents, and admissions made by parties on the witness stand.

Mr. PILLSBURY.—Q. Before Judge Noyes?

A. Before Judge Noyes.

Mr. McLAUGHLIN.—Q. It was a written instrument, or evidence in court?

A. I think it was evidence in court, before Judge Noyes.

Q. That is what you are stating, is it?

A. Yes, sir.

Mr. PILLSBURY.—Q. Just go on, Mr. Hume.

A. Besides the other evidence, there was the deed to myself; my interest in there. Prior to the trial of the action of Ring vs. Yager, the case of some person vs. McKay, who owned No. 8 on Gold Run, the adjoining claim to No. 7, an injunction had been had against McKay. The injunction had been dissolved by Judge Noyes, and an order issued putting McKay back in possession of the property under certain circumstances. At the same time McKay went to Gold Run with a copy of the order, to take possession of the property. Yager, who had been ousted from possession at the point of a shotgun and pistols by Ring and his associates, Mr. Keller and Mr. Kepner, who were jointly interested with Mr. Stevens as attorneys for the property; Mr. Yager went on No. 8 Gold Run, and assisted Mr. McKay in taking possession of that ground, exhibiting the order. The day after that

(Testimony of W. T. Hume.)

Mr. Yager and Mr. McKay, and two or three others, went down to No. 7, and drove the men off there who were robbing the claim at the instance of Mr. Stevens, and Mr. Ring, the plaintiff, Mr. Yager, and Mr. McKay and Mr. Wright, who was with Mr. McKay, and two others, or several others, were arrested for contempt before Judge Noyes for abuse of the process of the court. They were brought down from Gold Run with their witnesses, and were tried before Judge Noyes. He found them guilty of contempt in the abuse of the process of the Court in exhibiting the order he had made in the McKay case, and sent them to jail, sentencing McKay and Wright for thirty days, and Yager and another for fifteen days. He also made an order taking possession of No. 7 Gold Run away from Yager and his associates, and turning it over to Ring and his associates, who were Stevens, the United States Commissioner, and James L. Galen, Keller, and others. This order was enforced, and at the time of enforcing it they took possession of the property. After the taking of the possession, he pursued Yager and his people to the extent of arresting them again for contempt of court in going on the property, after he had turned it over to the plaintiffs in the case in the contempt proceedings. We then obtained a verdict in the case, after a delay of it, in favor of Yager and his grantees. The motion for a new trial was had in that case, and that motion for new trial was taken under advisement by Judge Noyes. He refused to enter a judgment on the verdict, and has the motion for new trial under advisement at this time, never having

(Testimony of W. T. Hume.)

decided it, and on the night he left Nome he made an order on an injunction, in the face of the supersedeas from the Circuit Court of Appeals, in which he enjoined Yager and his associates from going on the property No. 7, for which a verdict in their favor had been rendered by a jury, or a mandatory injunction commanding them not to interfere in any manner with the plaintiffs or their associates in working or operating that claim, to the further order of the Court, and left for Seattle that night, the order being made out three miles off shore, or made any way secretly. I will not say made off shore, because I did not see it, but it was made ex parte without notice, and no hearing was ever had, and Yager and his people were put out of possession of the property, and it was turned over to the plaintiffs, who had lost the action, Mr. Galen, Mr. Stevens, the United States Commissioners, and Mr. Keller and Mr. Ring, and they had possession at the time that I left Nome. Mr. Yager went up to hold possession, but was arrested and put in jail by Mr. Galen.

Q. Was Mr. Stevens a witness in that case before Judge Noyes?

A. Mr. Stevens was a witness in that case before Judge Noyes, and had testified in that case.

Q. To what effect?

A. He testified that he had a deed; that he owned or was interested in a quarter interest in the title of Herman A. Ring, the plaintiff, and that pending the trial of the action before Judge Noyes he had purchased Yager's one-third interest for $5,000. Yager testified that the condition was that he was to absent himself from testifying

(Testimony of W. T. Hume.)

in the case. Mr. Stevens denied that. Mr. Yager did absent himself some time.

Q. Did that make Mr. Stevens on both sides of the case?

A. That made Mr. Stevens own a quarter in the plaintiff's title, and he owned a third interest in the defendant's title. That was his testimony before Judge Noyes.

Q. Was he a United States Commissioner at that time?

A. He was the United States Commissioner at Nome at the time.

Q. Has he been removed since then?

A. I think he has not. Mr. Archie Wheeler and Mr. Stevens are both apparently acting as United States Commissioners at Nome, but just what their powers or jurisdiction are, I do not know just where they draw the line. They are both apparently acting, though.

(At this hour of 4 o'clock P. M., the Commissioner, with the consent of counsel, ordered an adjournment until tomorrow, Saturday, October 19, 1901, at 10 o'clock A. M.)

Saturday, October 19, 1901.

Present: The Commissioner, the official reporter, and counsel for the respective parties.

(In consequence of the necessary absence of Mr. Heney, one of the counsel appearing for Judge Noyes and Mr. Frost, upon professional business elsewhere, and upon his motion, the taking of further testimony herein is postponed until Monday next, October 21, 1901, at 10 o'clock A. M.)

(Testimony of W. T. Hume.)

Monday, October 21, 1901.

Present: The Commissioner, the official reporter, and counsel for the respective parties.

W. T. HUME, redirect examination resumed.

Mr. PILLSBURY.—Q. Mr. Hume, at the time we adjourned on Friday, you were speaking of some observations of the conduct of Judge Noyes, and in some of the cases you appeared as attorney. Now, state, if you remember, any case where Judge Noyes changed his position, or his opinion, or his ruling, after any change of attorneys.

Mr. McLAUGHLIN.—Mr. Pillsbury, are we going into the ruling of Judge Noyes in the various cases, and as to what ruling he made in one case, and what ruling he made in another case, and when he changed his opinion in the case, even though there was a change of attorneys, as having any bearing on the question as to whether or not Judge Noyes was guilty of contempt, either in failing to make an order that he should have made, or in making an order that he should not have made? I understand that to be substantially the issue in this case. We have permitted this matter to run along, and we perhaps are blaimable for having done so, but it was done upon the statement made at the commencement that a community of interests existed, and that a connection would be made at least a some time in the progress of the hearing, and as having a bearing upon the question as to whether or not, and only upon

(Testimony of W. T. Hume.)

the question as to whether or not, Judge Noyes was guilty of contempt. I apprehend we are not trying him before this tribunal for any other or different offense from that which may be spelled or inferred from the affidavit on which the order to show cause is based. If that be true, and I ask for the purpose of saving time, whether we are going into the question as to what Judge Noyes did or did not rule in certain cases; if that be so, the courts are going to have a very busy time, from the highest to the lowest in the land.

Mr. PILLSBURY.—I merely state this is re-examination of matter brought out on the cross-examination of this witness, as to what, if anything, he observed indicating corruption on the part of Judge Noyes, and illustrating his conduct in making the orders as he did, as we claim, to prevent the effect and operation of the writs of supersedeas.

Mr. McLAUGHLIN.—At this point, and so that we may shorten the matter as much as possible, I will ask you, Mr. Pillsbury, whether you intend to give in evidence any other facts that tend to connect Judge Noyes with any of the matters testified to here by this witness as having been said by Mr. McKenzie or by anybody else?

Mr. PILLSBURY.—I have stated once I am merely re-examining this witness as to matter brought out on cross-examination. I do not know all he may be able to state. I am merely asking him to state in full anything in that line. Read the question, Mr. Reporter.

(Testimony of W. T. Hume.)

Mr. McLAUGHLIN.—Then it is objected to as incompetent, irrelevant, immaterial, and inadmissible under any of the issues, and as having no tendency to prove any issue involved in this proceeding, and, Mr. Commissioner, I simply desire to reiterate that I think I am blamable for having so far permitted this matter to proceed as it has, without making an application to the Court to see whether or not, in the first instance, this class of testimony, defamation of character, and I say and say it advisedly, assassination, is going to proceed upon some evidence upon which it is based. I think that an application ought to be made to the Court, and made at once. If we must go into these collateral matters, and must disprove them, eternity may be long enough, but men may not be rich enough to be able to produce witnesses. I think it ought to be done now, unless there is some promise here that some evidence will be introduced that tends to connect Judge Noyes with any of these matters that this witness has testified about. If he says yes, then I think this is the time and this is the place when that evidence should not be offered. We are entited to some rights, certainly.

Mr. PILLSBURY.—I do not care to have a lot of running remarks put into this record, or to discuss these matters. I am interrogating this witness as to specific acts of Judge Noyes, and, as I understand it, in the direct line of re-examination.

Mr. McLAUGHLIN.—I simply say at this point I respectfully ask the Commissioner, in view of the fact that

(Testimony of W. T. Hume.)

no promise is made, that there will be any connection made in the future, that this matter be stopped here, if the Court so orders.

The COMMISSIONER.—Do you ask me to certify it to the Court?

Mr. McLAUGHLIN.—I do.

The COMMISSIONER.—Has the amicus curiae any objection to it being certified?

Mr. PILLSBURY.—I have. This examination has been postponed from last Friday until to-day, with the understanding that this testimony would proceed, and proceed as rapidy as might be consistent. I simply desire to proceed as I understand it is proper to do.

Mr. McLAUGHLIN.—Will it expedite matters to bring in evidence here that we may not be called upon to meet at all?

Mr. PILLSBURY.—I shall decline very respectfully, Mr. Commissioner, to enter into any further running discussion with counsel. I have stated frankly what my purpose was, and my understanding, and I respectfully submit that we should proceed with the taking of this testimony.

Mr. McLAUGHLIN.—Do you not think it fair, Mr. Pillsbury, that you should state whether you propose to produce any further evidence to connect Judge Noyes with any of the matters testified to?

(Testimony of W. T. Hume.)

Mr. PILLSBURY.—I have stated two or three times that this was testimony of the acts of Judge Noyes.

Mr. McLAUGHLIN.—I know you have.

Mr. PILLSBURY.—I do not propose to be interrogated any further.

Mr. McLAUGHLIN.—I insist most respectfully, Mr. Commissioner, that we are entitled to have the matter passed upon and determined.

The COMMISSIONER.—This same question came up in taking testimony in a very important case, where the Southern Pacific Company was a party. I refused then to certify the matter to the Circuit Court, and the matter went before the Circuit Court, and as I remember, my decision was approved of; that it is only in cases where a witness refuses to answer a question that it is the duty of the Commissioner to certify it to the Court if an answer is insisted upon, in order that the Court may determine whether the witness is guilty of contempt or not in refusing to answer the question, or otherwise. Such is the practice. However, in chancery cases, the rule provides further a penalty, if a party calls out testimony which is irrelevant and immaterial, and in that way the record is encumbered, that such party shall pay the costs. I do not know what the rule would be in an examination of this kind. I think the better practice is to proceed with the testimony, and have it ultimately determined by the Court. The witness will answer the question. Read the question, Mr. Reporter.

(Testimony of W. T. Hume.)

(The reporter reads the previous question as follows: "Mr. Hume, at the time we adjourned on Friday, you were speaking of some observations of the conduct of Judge Noyes, and in some of the cases you appeared as attorney. Now, state if you remember any case where Judge Noyes changed his position, or his opinion, or his ruling, after any change of attorneys.")

A. In two cases, one of Bergstrom vs. Plough, and the other of Park vs. Overman, I being attorney in those matters, I observed the change.

Mr. PILLSBURY.—Q. State exactly what it was.

Mr. McLAUGHLIN.—I apprehend that the objection already made, and the agreement which we entered into at the beginning, covers this class of testimony?

Mr. PILLSBURY.—Yes.

A. In Bergstrom vs. Plough, the motion for new trial was overruled on my application, and granted upon the application of Joseph K. Wood and John McGinn.

Q. You made the motion for a new trial?

A. I made the motion for a new trial, which was promptly overruled. A short time after that, a motion for a new trial was made on behalf of my client, as I stated in my former testimony, which was allowed and granted, upon the same ground upon which I had made it, which motion was granted on a change of attorneys.

Q. You spoke of a case in which one Yager was a party. A. Yes, sir.

Q. Charles C. Yager? A. Yes, sir.

(Testimony of W. T. Hume.)

Q. That was a case of the United States ex rel. Albert T. Stout?

A. Yes, sir, that was the contempt proceeding to which I have referred.

Q. Reading from the record of that proceeding at page 188, it appears that an objection was made that the Court had no jurisdiction to issue a citation in the cause, "that said citation is not based upon any affidavit entitled or commenced as provided for under section 614 of chapter 58 of the Civil Code of the District of Alaska, and that the Court has no jurisdiction of the defendants, or either of them, or the subject of this proceeding. That there is a defect of parties to the action. That it does not appear from the affidavit upon which said citation was issued that such affidavit was made by any person competent to make an affidavit for contempt in the matters and things set out in said affidavit. That it does not appear from the affidavit upon file herein, and upon which said citation was based and issued, that defendants have a legal justification and excuse of the acts, matters, and things charged against said defendants and each of them, and that said affidavit contains allegations and statements which, if true, would constitute a legal bar to the proceedings for contempt." Whereupon the Court ruled as follows: "I do not believe that this affidavit is sufficient; I do not believe that it sets forth a proceeding such as I can entertain jurisdiction of at this time. As a consequence, the motion of defendants' counsel will prevail.

(Testimony of W. T. Hume.)

Mr. FRAWLEY.—If the Court please, we would like the defendants to be held to appear here at 2 o'clock this afternoon, when we have had time to prepare supplemental affidavits." Do you remember that taking place?

A. Yes, sir, I remember that occurrence.

Q. Was there any proceeding at 2 o'clock?

A. Yes, sir, at 2 o'clock they served us with some other affidavits, I believe about the time that we came into court, and we demanded time. They abandoned the second affidavits, and went to trial on the first, I believe.

Q. I want to know whether at 2 o'clock, if you remember, the Court change its ruling after those affidavits, and held they were sufficient.

A. He put us on trial on those affidavits. The circumstances were that they served us with some other affidavits just about the time that Court met. We objected going to trial until we could prepare demurrers and motions to them, and have a hearing. The attorneys representing the Government in that matter then said that if it would take time, they would abandon the affidavits they had filed, and proceed on the original affidavits. The Court thereupon proceeded to try us on the original affidavits, which he held were sufficient, and convicted us.

Mr. McLAUGHLIN.—Q. Does not that matter appear of record?

(Testimony of W. T. Hume.)

Mr. PILLSBURY.—Yes. I am going to read from page 15.

Q. Who appeared at 2 o'clock?

Mr. McLAUGHLIN.—It appears to me it is peculiarly objectionable.

Mr. PILLSBURY.—I am simply showing he was present at the proceedings.

The WITNESS.—I was present.

Mr. PILLSBURY.—Q. I will read from page 15: "Mr. Stevens. We will stand on the original affidavit, if your Honor please, if there is any question of granting time." At page 16 the Court says: "Under the statement of counsel, you may take your testimony under the original affidavits."

Mr. HENEY.—We object upon the ground that the record is the best evidence.

Mr. PILLSBURY.—I am reading from it, sir.

Q. (Resuming.) Now, I will ask you, Mr. Hume, what, if anything, you observed, or what, if anything, took place between the time in the morning and 2 o'clock in the afternoon when the ruling was changed concerning those affidavits?

A. I do not know exactly that I understand your question. What, if anything, took place?

Q. I say, who appeared at 2 o'clock in support of the affidavits?

A. Mr. Stevens appeared. I think he was the leading counsel in that matter in support of the affidavits. Mr.

(Testimony of W. T. Hume.)

Frawley also appeared. I think he had nothing to say. I think Mr. Stevens was the leading counsel—Mr. R. N. Stevens.

Q. Who was Mr. R. N. Stevens?

A. He was the United States Commissioner at Nome Precinct.

Q. How long had he been such

A. He had been United States Commissioner at Nome Precinct—the date I could not give exactly, but he was the first one appointed by Judge Noyes, and has remained such ever since, as I have understood, for that precinct.

Q. Did he usually practice before Judge Noyes?

A. Yes, sir; he practiced before him the same as any other attorney when he had business there.

Q. Did Mr. Stevens appear in any other case that you have mentioned which came under your observation?

A. I think not in any case that I have mentioned. I am not positive.

Q. You were asked about a conversation which you had in the presence of Judge Noyes with McKenzie, or with McKenzie and Judge Noyes, concerning the first writs of supersedeas issued by the United States Circuit Court of Appeals. What disposition, if any, was manifested by either Judge Noyes or Mr. McKenzie in that conversation, or what intimation was there of a disposition to obey those writs?

Mr. McLAUGHLIN.—I object to the question as incompetent, irrelevant, and immaterial, and I make, of

(Testimony of W. T. Hume.)

course, the specific objection that the witness ought to be asked what was stated by the parties present, and not for his opinion; but what was actually said, and by whom said, and not ask the witness to characterize, as has been done in this case, and place his construction and his notion of what has been done, on it, rather than give us the facts and let the Court draw its conclusions from the facts. There has been too much of that.

Mr. PILLSBURY.—That is not the purpose at all. I am simply asking as a fact whether anything was said, or any disposition was evinced to obey those writs, or find a way to obey them.

Mr. McLAUGHLIN.—That resolves itself into not what was said. I have no objection as to what was said.

Mr. PILLSBURY.—I ask if anything was said; that is what I am getting at; whether the conversation was directed to means to evade the writs or obey them.

Mr. McLAUGHLIN.—That is the portion of the question I specially object to. I think it ought not to be asked. If the witness is asked to state any conversation that was had, he can state what the conversation was, and then we will conclude what its purpose was.

Mr. PILLSBURY.—I am asking him whether there was any conversation on certain subjects.

Q. Answer the question, Mr. Hume.

A. It is difficult to remember the exact words that were used further than I have stated them. The trend of the conversation, or the conversation, was based upon

(Testimony of W. T. Hume.)

the statements to which I have testified, that the writ was considered void, and it was concerning that matter, and the necessity of obedience of a void writ, or want of necessity. That is as near as I can answer it.

Q. Something was said about the clerk Borchsenius concealing himself. Did you ever hear of any suggestion of that sort at any time there?

A. No, sir. I did not at that date, the 23d of July, know Mr. Borchsenius, never having seen him, and never heard of his having concealed himself at any time.

Q. There was something said about an occasion in which some question arose as to Judge Noyes' personal bearing towards yourself. You had some talk with him. Just state how that came about. I want to get out how it came about; whether you first spoke to Judge Noyes, or whether you first spoke to Mr. McKenzie.

A. I first spoke to Mr. McKenzie.

Q. Did you speak to anybody else?

A. I spoke to Mr. McKenzie—I spoke to my partners in the office, and I also spoke to Mr. McKenzie, and I expect I spoke to a good many other people.

Q. What did Judge Noyes say? Just state the interview.

A. I met Judge Noyes on the street—we were holding court in Brown's Hall at that date—I met Judge Noyes that afternoon, and he stated that McKenzie had spoken to him, that I had spoken to McKenzie with reference to what occurred in the morning, and that he was sorry I felt offended, and it would not occur again; that he

(Testimony of W. T. Hume.)

thought I understood the rules better than that; that I had been hasty in feeling offended in the matter.

Q. On any other occasion did Mr. McKenzie act as an intermediary between you and Judge Noyes, as you learned afterwards, in any conversation with Judge Noyes, or was any interview with Judge Noyes brought about by Mr. McKenzie?

Mr. McLAUGHLIN.—In addition to the objection already made, I protest against such a proceeding and question as that. It is not pretended that the witness is asked to state any fact at all, and the question can only have one object, for the purpose of blackening character, without any opportunity of meeting it any more than any man on earth can meet a charge that is made that some one else said something about him. No Court or person is safe if such a proceeding is permitted to continue, and no man's character is safe.

Mr. PILLSBURY.—Q. Please answer the question, Mr. Hume. A. Read the question, Mr. Reporter.

Mr. McLAUGHLIN.—I will ask you to state facts, Mr. Hume, if you will, of your own knowledge.

The WITNESS.—I am simply a witness, and am supposed to answer the question.

Mr. PILLSBURY.—I suggest that the witness knows enough to testify as the law requires, and that he should not be lectured by counsel in that way.

Mr. McLAUGHLIN.—I am not lecturing him. I am asking him to state facts of his own knowledge.

(Testimony of W. T. Hume.)

Mr. PILLSBURY.—That is all any person has asked of him.

Mr. McLAUGHLIN.—Oh, no.

Mr. HENEY.—That is not all he has done.

Mr. PILLSBURY.—Q. Read the question, Mr. Reporter.

(The reporter reads the previous question as follows: "On any other occasion did Mr. McKenzie act as an intermediary between you and Judge Noyes, as you learned afterwards, in any conversation with Judge Noyes, or was any interview with Judge Noyes brought about by Mr. McKenzie"?)

Mr. McLAUGHLIN.—I submit that does not ask for facts.

Mr. PILLSBURY.—Q. Please answer the question, Mr. Witness.

A. I do not remember of any distinct—I cannot give any distinct date or conversation other than what I have testified to where Judge Noyes informed me that McKenzie had acted as a mediator, as I understand your question.

Q. I mean, did you have any interview with Judge Noyes which was brought about by Mr. McKenzie?

Mr. McLAUGHLIN.—Q. If you know personally, Mr. Hume.

A. I had interviews with Judge Noyes concerning matters by direction of Mr. McKenzie, that is, McKenzie informed me that he had spoken to Judge Noyes, and for

(Testimony of W. T. Hume.)

me to see Judge Noyes. In that way I had interviews with Judge Noyes, but I do not recollect of Judge Noyes having told me that the meeting was brought about by McKenzie.

Mr. PILLSBURY.—Q. In those meetings with Judge Noyes, were the matters spoken of that had been called to your attention by McKenzie?

A. Yes, sir, there were matters; those occurred frequently during the early summer of 1900; with reference to the Anvil Creek litigation.

Q. That is what I was going to ask you about, to what it had reference; that is the litigation in which McKenzie was appointed receiver?

A. That is the litigation in which McKenzie was appointed receiver, and was concerning orders, briefs, arguments, and so forth.

Q. You say you were promised stock. Was it ever issued?

A. I have never seen any evidence of it—certificates of stock or otherwise.

Mr. McLAUGHLIN.—Stock?

Mr. PILLSBURY.—Yes, stock in the Alaska Gold Mining Company.

A. (Resuming.) I never have seen or received any evidences of stock, or certificates, or otherwise.

Q. Something was said about the appointment of a receiver being held up until McKenzie was satisfied. What was that?

(Testimony of W. T. Hume.)

A. That was in the case of Mrs. A. Requa vs. Jafet Lindeberg, and Thomas Jacobs vs. John Brynteson, involving two claims on Dexter Creek.

Q. Who was appointed, if any one, receiver finally in those cases? A. McKenzie.

Q. Now, then, you spoke of McKenzie naming the receiver for Watson in some matter. What was the case?

A. That was in the case of the Leo & Libra Mining Company—there may be some other words to it—vs. the Alaska Exploration Company, Swanson and Jenson, intervenors. They are two Swedes; I do not know their first names. Richard Watson was grantee and interested with them involving No. 2 on Crooked Creek.

Q. State what came under your observation in regard to that appointment, what led up to it?

A. The petition for intervention was filed, and my clients were anxious for a receiver.

Mr. McLAUGHLIN.—Q. Your clients were whom?

A. Swanson and Jenson, the intervenors. Mr. Watson represented them, or had an interest with them. They were anxious for a receiver to be appointed. I prepared the affidavit on an application for a receiver, and filled it, I think—no, I did not file it until I had a conversation with McKenzie. Then I was told to file the application for a receiver, and it would be granted. I filed the application for a receiver, and it was granted, Mr. McKenzie becoming a partner with Watson, Swanson and Jenson, or interested with them. I was told who to suggest for a receiver, and he would be appointed. Whether

(Testimony of W. T. Hume.)

I suggested him or whether I did not, I do not recollect. My recollection is not clear upon that. I may have or may not, but the man whom I was informed would be appointed the receiver on the application was appointed. This was after the arrangement had been made between my clients and Mr. McKenzie.

Mr. PILLSBURY.—Q. What arrangement?

A. The arrangement for the appointment of the receiver, and an interest or share in the proceeds arising from the litigation, if we were successful, and from the receivership. What his arrangement with the receiver was, I do not know personally. That was about the time that I was taken sick that the matter was consummated. For that reason, I am not sure whether I applied for a receiver in court or my partner. The matter had been arranged about the time I was taken sick, and the receiver was appointed.

Q. You say an arrangement was made for an interest. An interest to whom? A. McKenzie.

Q. What was that interest?

A. I say I do not know the amount of the interest. I know from the statement of McKenzie and my clients that they had agreed to an arrangement in order to get the appointment of a receiver, for a division or percentage to McKenzie.

Q. What interest, if any, in the property did they have?

A. They were suing for the entire property.

Q. Did you understand that McKenzie was to have

(Testimony of W. T. Hume.)

an interest in the commissions of the receiver, or an interest in the property, or both?

A. I think it both.

Mr. McLAUGHLIN.—I was going to suggest that he has already stated he did not know except so far as McKenzie told him.

Mr. PILLSBURY.—Certainly, but McKenzie told him that he would have a receiver, and would have a certain man appointed, and that afterwards that man was appointed.

The WITNESS.—Yes.

Mr. PILLSBURY.—I am satisfied with that connection.

Q. As I understand it, McKenzie undertook to get certain action from Judge Noyes in consideration of certain interest in the property. Did he get the action that he had promised to obtain?

Mr. McLAUGHLIN.—Wait a moment. I want to specifically object to that question as not only being incompetent, irrelevant, and immaterial, but as intending to draw out the testimony that I think the counsel knows is incompetent for any purpose, and can have but one object in view, and that not a proper one.

Mr. PILLSBURY.—The witness has been asked upon cross-examination as to anything he observed indicating that Judge Noyes was corrupt. I am prepared to show that Mr. McKenzie, for a consideration, offered to obtain certain action on the part of the Judge, and that after-

(Testimony of W. T. Hume.)

wards that action was obtained. The only inference I can see is, that either he was a mind-reader, or else he must have had an arrangement with Judge Noyes by which he could deliver what he had contracted for. That is why I asked the witness whether—

Mr. HENEY.—(Interrupting.) To whom are you now arguing the case, Mr. Pillsbury?

Mr. PILLSBURY.—I think the argument has been pretty much on your side this morning.

Mr. McLAUGHLIN.—Oh, no. It does not need the force of the objection. The witness has already undertaken to testify what the parties told him. Now, you want him to draw, not only his, but your inferences.

Mr. PILLSBURY.—I beg your pardon; I do not.

Q. I ask you whether the action of Judge Noyes, after the arrangement was made by which McKenzie was to have an interest in that property, was or was not the same as he had promised to obtain?

A. That was the same. That was the consideration of the deal between McKenzie and my client.

Q. What I want to get at is whether the Judge acted as McKenzie had undertaken for that consideration, that he would act? A. Yes sir.

Recross-Examination.

Mr. McLAUGHLIN.—Q. Mr. Hume, beginning with the last case, that of the Leo & Libra Company against the Alaska Company, where Swanson and Jenson were

(Testimony of W. T. Hume.)

intervenors, you were the attorney for the intervenors, and in that case you wanted a receiver?

A. It was to the interest of my clients to have a receiver.

Q. Did you understand my question, Mr. Hume?

A. Yes, sir.

Q. It not only was to the interest of your clients, but I asked you whether in that case, in the interest of your clients, you wanted a receiver appointed?

A. Yes, sir.

Q. And was it a proper case for the appointment of a receiver? A. At that time I thought it was.

Q. And a receiver was appointed in that case?

A. Yes, sir.

Q. Who was the receiver in the case?

A. D. M. Brogan, or Denny Brogan.

Q. Now, in the case of Mrs. Requa vs. Lindeberg, and Thomas Jacobs vs. Brynteson, did you say a receiver was appointed in those cases? A. Yes, sir.

Q. Are the two cases one, or connected in any way? Have they any connection, one case with the other?

A. No, sir, they involved different claims.

Q. Were you attorney for either of the parties?

A. Both of them.

Q. In the case of Mrs. Requa vs. Lindeberg, for whom were you attorney? A. Mrs. Requa.

Q. The plaintiff? A. Yes, sir.

Q. In that case you asked for the appointment of a receiver, did you? A. I did.

(Testimony of W. T. Hume.)

Q. And it was a proper case for the appointment of a receiver?

A. As I looked at the law at that time, I thought it was.

Q. That is all I am asking you about.

A. Yes, sir.

Q. A receiver was appointed in that case?

A. Yes, sir.

Q. In the case of Thomas Jacobs vs. Brynteson, were you attorney for the parties?

A. For Thomas Jacobs.

Q. And in that case you asked for the appointment of a receiver? A. I did.

Q. And that was a proper case for the appointment of a receiver?

A. As I viewed the law at that time, I thought it was.

Q. You so presented it as a proper case for the appointment of a receiver?

A. If you ask me as I looked at it at that time, or look at it now—

Q. Of course, in the light of past experience, even the Supreme Court of the United States has been known to modify former rulings; likewise you.

A. As I looked at it at that time, I thought it was a proper case under the law.

Q. And a receiver was appointed in that case?

A. Yes, sir.

Q. Now, the stock in the Alaska Gold Mining Company, that you say you did not receive: That was stock,

(Testimony of W. T. Hume.)

as I understand it, that Mr. McKenzie promised you for the transfer to him of that contingent interest that you had? A. Yes, sir.

Q. But he never gave it to you?

A. I do not know whether there was ever any stock. I do not know anything about the company. I never saw any stock, or evidences of stock, or anything about it.

Q. I understand you to say the only thing you know about the Alaska Gold Mining Company is what Mr. McKenzie told you about it?

A. I think I saw its seal—I do not know whether I saw a seal. I saw a document signed by the Alaska Gold Mining Company, in addition to what Mr. McKenzie said.

Q. You have reason to believe there was such an organization?

A. I believed Mr. McKenzie was telling me the truth about it.

Q. Now, coming down to the next matter that I have noted here Mr. Hume, which is where you stated that Judge Noyes, at the same time in the courtroom, or somewhere else, did not treat you in a manner that you thought becoming, and you complained to Mr. McKenzie about it, and complained to a good many others about the incident, and that subsequently Judge Noyes met you on the street and said he was very sorry that the matter had happened. What was there, and where was it? What had Judge Noyes done to hurt your feelings, and where was it? A. In Brown's Hall.

(Testimony of W. T. Hume.)

Q. In the courtroom?

A. In the courtroom, in the presence of the balance of the bar.

Q. Was it in the trial of a case?

A. It was not.

Q. Was Judge Noyes on the bench at the time?

A. He was on the bench.

Q. The court was engaged?

A. The court was engaged, I suppose, in hearing ex parte motions.

Q. Were you addressing the Court?

A. I was addressing the Court.

Q. On some motion? A. Yes, sir.

Q. So it was upon some matter before the Court?

A. It was a matter before the Court, where he unnecessarily so addressed me as to attract the attention of the entire bar, as a Court can, with a sharp rebuke, unnecessarily.

Q. You thought it was a rebuke, and that it was unnecessary. What was it? Give us as near as you can what it was, what he said, and anything that called it out. You were reading an affidavit probably or arguing a motion? A. No, sir.

Mr. PILLSBURY.—Q. State what occurred, and we will know.

A. The cases of Requa vs. Lindeberg and Jacobs vs. Brynteson had been set for trial. I had been informed that the cases could not be tried unless we agreed to this

(Testimony of W. T. Hume.)

receiver business, and some arrangements that were being transacted between Mrs. Requa and Mr. McKenzie. The day the case was set for trial, Judge Noyes was sick, or did not appear at any rate. The day after, or shortly after, as soon as he did appear, I called these cases up in open court, and asked to have these cases set, reciting the fact that they had been set, and my clients were very anxious to have them set, and the Judge not being present, they missed their place on the docket, and I desired to have them tried as soon as possible. I addressed the Court in a respectful way in that line. In a very curt and short manner, he told me I had no right to come into court and make an oral motion; that I had better sense than that; that I ought to know better than address him; that I could file my motion, and let it go on the trial docket and take its course. I said the case had been on the trial docket. He said that was enough of that; that I had better sense than come into court and address him; that I ought to know the rules of the court, if I did not, and language of that character, that attracted the attention of the entire bar at the time, and was commented on. I felt it was an unnecessary and voluntary insult to me in open court. It was with reference to those matters that I addressed Mr. McKenzie, on account of knowing the circumstances concerning those cases.

Q. That was the rebuke that was administered to you?

A. I am not undertaking to give all of the exact lan-

(Testimony of W. T. Hume.)

guage. I give the substance just as I recollect it, as it was impressed upon my mind at the time on the occasion of my becoming offended at the manner I was treated.

Q. You thought it was unnecessary and uncalled for?

A. I thought it was unnecessary and uncalled for.

Q. So you complained to a good many people about it?

A. I did not complain to a good many people. I say I talked to a good many people.

Q. That is what I mean.

A. Many members of the bar called my attention to the unnecessary rebuke I had received in open court, and wondered why it was.

Q. About what time was that?

A. This was after the court opened on the 22d; the court opened on the 22d of August, and this was along in the month after that. I think I stated that the cases were set the first week of September for trial, or placed upon the docket.

Q. You are speaking now of 1900? A. Yes, sir.

Q. It did occur before the arrival of these writs of supersedeas in the Chipps case and the other cases of that character?

A. My impression is so; it was an incident that I thought was—I could not fix the date to swear to it.

Q. Not precisely, but it was shortly after the opening of the court?

A. It was along in there, because there were several days during the early part of September, two or three, perhaps, when we had severe storms, and the Judge did

(Testimony of W. T. Hume.)

not hold court—what dates those were, I could not tell—on account of the very severe storms that we had; so it is difficult to fix a matter, the date of which I had no occasion to fix.

Q. Now, in the contempt case spoken of, I think that is the Yager case—

A. The case I referred to is the Yager case.

Q. Who were the parties to the Yager case; I did not get the names.

A. There were two or three different titles to it. I think as it came here it was the United States ex rel. Stout vs. McKay and others. I think that is the title under which it came here. There were three different affidavits and each of them were entitled differently. I think the title that it came here under was the United States ex rel. Stout vs. McKay and others.

Q. In that case can you tell me about when the action was commenced?

A. In the contempt proceedings?

Q. No, the case out of which the contempt proceeding arose.

A. That is the case I told about the other day, about No. 7 and No. 8 Gold Run.

Q. About when were the cases commenced?

A. The action against Yager, involving No. 7 was begun on the 14th day of February, 1901. The action against McKay by Stout—I was not attorney in that case—was begun some time prior to that time, I think.

Q. Anyway these cases were commenced in 1901?

(Testimony of W. T. Hume.)

A. I am not positive as to the Stout-McKay case. The Yager-Ring case was begun on the 14th day of February, 1901.

Q. In the Yager case, so called, which of the parties did you represent? A. The defendants.

Q. And the defendants were whom?

A. Charles C. Yager, Gordon Hall, H. M. Carpenter, W. T. Hume.

Q. You were one of the defendants in that case yourself, were you?

A. I was; not in the contempt proceeding.

Q. No, I understand that; it was in the main case.

A. Yes, sir, in the main case. There was also A. L. Halstead.

Q. Now, in the contempt proceedings growing out of that case, did you appear as attorney for the party charged with contempt?

A. I appeared for Charles C. Yager.

Q. He was the party charged with contempt, was he?

A. He was one of them.

Q. Any others charged with contempt besides Yager?

A. James McKay.

Q. Who appeared for James McKay?

A. Mr. P. C. Sullivan and Mr. J. E. Fenton appeared as attorneys for James McKay and for Donahue—I have forgotten his first name—and for Charles Wright. Mr. Fink appeared with me for Charles C. Yager.

Q. Mr. Sullivan was a lawyer practicing there in Nome? A. Yes, sir.

(Testimony of W. T. Hume.)

Q. He appeared for McKay, acting with some other attorneys? A. Yes, sir, acting with Mr. Fenton.

Q. And Mr. Fink and yourself were acting as attorneys for Charles C. Yager? A. Yes, sir.

Q. Anybody else associated with you except Mr. Fink?

A. There were other attorneys associated in the defense of the main case.

Q. No, I mean in the contempt proceedings.

A. I think Mr. Fink and I conducted the contempt proceedings alone.

Q. Now, in the prosecution of the main case, will you give us the names of the attorneys who were engaged on each side of that case?

A. In the main case was R. N. Stevens, James Frawley, Albert Keppner, and a Mr. Keller, I have forgotten his first name, Judge Johnson, Mr. Fuller; I am not positive, but I think Mr. Bard, Mr. Lewis. I am not positive about Mr. Bard being interested; he may not have in that case, although he was present.

Q. The attorneys you have mentioned were on one side of the case?

A. Yes they were for the plaintiff; I think that was all of them. I think that comprises the list. On the defendants' side, there was Mr. Fink—or the firm of Jackson, Pittman & Fink—and myself.

Q. That was all, you think? A. Yes, sir.

Q. Had your copartnership at that time been dissolved; were you practicing alone?

(Testimony of W. T. Hume.)

A. Our copartnership, Hubbard, Beeman & Hume, had been dissolved; I had an arrangement with Mr. Beeman. I did not conduct business under a partnership name; I conducted business under my own name.

Q. You appeared individually with the Jackson firm?

A. Yes, sir, with Mr. Pittman and Mr. Fink, of the Jackson, Pittman & Fink firm.

Q. And it was your clients and Mr. Fink's clients that were punished for contempt?

A. All of the defendants were punished. Mr. McKay, Mr. Wright, Mr. Donahue, and Mr. Yager, were punished for contempt.

Q. They were your clients?

A. Mr. Yager was; they were tried jointly. I remanded a separate trial, but they were tried jointly. I appeared for Mr. Fink and I appeared for Mr. Yager. The other gentlemen appeared for the other defendants in the case.

Q. Do you know who specially prosecuted the contempt proceeding, if it may be called a prosecution; who appeared in support of the defendants being visited for contempt, in support of that motion or proceeding?

A. Well, I think there were four gentlemen, four of the defendants' counsel, participated actively in the prosecution.

Q. Who were they?

A. Mr. R. N. Stevens, Mr. James Frawley, Judge Johnson, and Mr. Keller.

(Testimony of W. T. Hume.)

Q. They were the gentlemen who asked that your clients be punished for contempt.

A. They were the gentlemen representing the Government.

Q. And, as I understand you, they were punished?

A. Yes, sir, they were convicted.

Q. Now, we have Bergstrom vs. Plough and Park vs. Overman. In Bergstrom vs. Plough and Park vs. Overman, the cases in some way were connected, were they? A. No, sir.

Q. Well, then, we will take Bergstrom vs. Plough, because, as I understand it, that is the case where you had made a motion for a new trial?

A. Yes, sir.

Q. You represented the plaintiff, did you?

A. I represented the defendant.

Q. And the case was tried by a jury?

A. Yes, sir.

Q. And the jury had found against you?

A. Yes, sir.

Q. And you made a motion for a new trial?

A. Yes, sir.

Q. And that motion had been denied?

A. Yes, sir.

Q. Do you remember the grounds—I don't ask you to go into details, but generally do you remember the ground upon which you made your motion; upon what did you ground it? Did you ground it upon any particular thing?

(Testimony of W. T. Hume.)

A. Now, that is a difficult matter to answer. I made my motion upon all of the grounds set out in the statute, law and evidence, as an attorney generally does.

Q. Well, it is your recollection that you based it on insufficiency of the evidence, and errors in law occurring at the trial?

A. Yes, sir, on every ground that I thought was a proper ground; just what grounds were contained in my motion, I would not swear to.

Q. But when you came to argue your motion for a new trial, notwithstanding the broadness of the grounds stated, it is sometimes limited to points that you think worthy of notice? A. Yes, sir.

Q. Now, do you remember the particular grounds that you urged on your motion for a new trial?

A. I urged all the grounds; insufficiency of the evidence, and errors in law occurring at the trial, but I could not give you the particular grounds now, and swear to them. I could not undertake to swear positively just what propositions I submitted.

Q. Oh, no, I don't ask that. I simply want your best recollection of the particular grounds you urged as a reason why the motion should prevail. Now, you say that subsequently there was a change of attorneys in that case? A. Yes, sir.

Q. And that Mr. Joseph K. Wood argued a motion for a new trial, after it had been denied?

A. Mr. Wood and his associate, Mr. McGinn.

(Testimony of W. T. Hume.)

Q. And there was an order in that case granting a new trial? A. Yes, sir.

Q. Do you remember the ground upon which the new trial was granted?

A. I could not testify to it now. I knew it at the time.

Q. Do you know whether the ground that the new trial was granted upon was included in the points pressed by you on your motion for a new trial?

A. Yes, sir, I knew at the time that it was; I could not tell you now. At the time I knew the grounds pressed by them and the grounds pressed by me. It was fresh in my memory at that time.

Q. And you think it was the same ground?

A. Yes, sir, the same proposition. I had a conversation with Judge Noyes about the matter—

Q. Well, I haven't asked you about that yet.

A. Well, yes, that is right.

Q. Now, the case of Park vs. Overman: You were attorney for Mr. Park, were you? A. Yes, sir.

Q. I don't remember whether there was an application for the appointment of a receiver in that case—was there?

A. I think not; not as far as I was concerned.

Q. You were for the plaintiff in the case?

A. Yes, sir.

Q. It involved a mining claim, did it?

A. No, sir, it involved the right of possession to a town lot.

(Testimony of W. T. Hume.)

Q. Was it forcible entry and detainer, or was it a suit in ejectment?

A. It was an action in the nature of ejectment; I don't know what you would call it exactly. A suit to quiet title—it was an action to get the defendant out of possession.

Q. The defendant was in possession of some property claimed by the plaintiff? A. Yes, sir.

Q. And the action was brought either in ejectment or forcible entry and detainer, or to quiet title?

A. Well, we had no titles for it up there then. They were all squatters on Government land, and there was no title. It was an action brought for the purpose of taking possession of that particular lot.

Q. And did I understand you to say there was a change of attorneys in that case?

A. There was—I modify that—I did not retire as an attorney on the record in that case, but turned the trial of the case over to another attorney, and had business out of town.

Q. Well, that is the way I understand it. You didn't retire from the case so as to have a substitution of somebody else for you?

A. No, I didn't substitute an attorney, but I had business out of town.

Q. You had the assistance—

A. I turned the entire case over to another attorney.

Q. Yes, in fact, you did. A. Yes, sir.

Q. But you let it appear as a matter of record that you were still the attorney?

(Testimony of W. T. Hume.)

A. I did not withdraw as attorney of record, but I turned the entire case over, and didn't try the case.

Q. Well, I say, in fact, you turned it over entirely.

A. Yes, sir.

Q. But, as a matter of fact, you permitted it to remain as a matter of record that you had not withdrawn?

A. Well, he associated himself with me.

Q. Do you remember the date of that case?

A. I could not give you the date.

Q. I don't mean the day of the month; I don't expect you to remember the day of the month at all. I don't mean that when I speak of dates. About when was the action commenced?

A. Commenced in the fall of 1900, by my partner Mr. Beeman.

Q. In the fall of 1900?

A. Yes, sir, I think so.

Q. And it was tried when?

A. It was tried in the spring of 1901.

Q. Who was the attorney you associated with you?

A. Mr. M. J. Cochrane.

Q. He was a practicing lawyer there in Nome?

A Yes, sir.

Q. Had been there for some time? A. He had.

Q. That, of course, was not a jury trial, was it?

A. I think that was tried before the Court. That matter was arranged after I turned the management of the case over to Mr. Cochrane.

(Testimony of W. T. Hume.)

Q. Was it tried before the Court, or before a referee, or a master appointed to take testimony?

A. I think it was tried before the Court.

Q. How long had Mr. Cochrane been practicing law in Nome?

A. I think he came down from Dawson in the fall of 1899, on one of the last boats, or else he came up early in the spring of 1900. I think he came down the Yukon in the fall of 1899. I think he was there in the winter, but I am not positive about that.

Q. Well, he was a gentleman of good standing, was he?

A. Mr. Cochrane was an attorney at the bar there, and I presume all the attorneys at the bar were considered in good standing; yes, sir. I know nothing against Mr. Cochrane's standing as an attorney, particularly.

Q. Now, for the purpose of refreshing your recollection, wasn't that case referred to Judge Reed to make findings and report judgment, by agreement or stipulation of the parties?

A. No, sir, I think not. I will say that I did not try the case. The management of the case was turned over to Mr. Cochrane. I was in court at the beginning of the trial of the case for an hour or so, and I think it was tried before Judge Noyes without a jury. A case in which I was involved was referred to Judge Reed, but it was not this case.

Q. It was not this case? A. No, sir.

(Testimony of W. T. Hume.)

Q. Well, at any rate, the cause was tried, and there were findings and conclusions of law, and a judgment ordered entered for the plaintiff or for the defendant, which was it?

A. Judgment was entered for the plaintiff.

Q. Your client? A. Yes, sir.

Q. You thought you were entitled to prevail in that case? A. I thought I was.

Q. And judgment was properly rendered in favor of the plaintiff?

A. I thought the plaintiff was entitled to recover.

Q. I have simply gone over the cases, Mr. Hume, that you mentioned this morning, but on Friday you mentioned some other cases, I think, didn't you?

A. I simply mentioned cases in which I was attorney that I had personal observation of; none that I was not the attorney in or knew something about.

Q. In the Bergstrom-Plough case—that is the one we have just discussed? A. Yes, sir.

Q. Now, there is Wood vs. Plough, and Plough vs. Wood: Have we discussed those cases this morning?

A. No, we have not discussed them.

Q. In Wood vs. Plough and Plough vs. Wood—cross-cases, apparently?

A. Yes, sir, involving the same property.

Q. Was that mining property?

A. That was a town lot.

Q. In that case, I think you say that Joseph K. Wood was substituted for you?

(Testimony of W. T. Hume.)

A. Yes, sir, substituted by me.

Q. By you? A. Yes, sir.

Q. You represented the plaintiff, did you, in Wood vs. Plough?

A. No, I represented Mrs. Beaton; she was known in the case as Mrs. Plough.

Q. And you represented the plaintiff in Plough vs. Wood? A. Yes, sir.

Q. And you substituted Joseph K. Wood for yourself in those cases? A. Yes, sir.

Q. And they were tried? A. Yes, sir.

Q. Do you know whether they were court or jury cases? A. I don't know; I was not present.

Q. When were those cases commenced, if you remember?

A. Well, those particular cases I could not say. That controversy had been running for some time. I thing that those particular cases were begun in 1900; I could not state definitely. There were numerous cases, but I think those were begun in the fall of 1900.

Q. And they were tried when?

A. They were tried in the spring of 1901, I think; that is, in the late winter or early spring. I think they were, but I would not be positive. I withdrew from them in the winter.

Q. Now, as I understand it, your client was successful in the cases of Wood vs. Plough and Plough vs. Wood—finally successful, I think.

A. Mrs. Plough was successful. She was not my client at the time the case was tried.

(Testimony of W. T. Hume.)

Q. But she was at the time you commenced the action? A. Yes, sir.

Q. And you thought she ought to prevail, I suppose?

A. Well, I was employed to represent her interests, and that we undertook to do to the best of our ability.

Q. And you thought she had a good cause on the merits? A. That is a hard question to answer.

Q. You don't remember about that now?

A. I suppose a lawyer is employed to represent his client the best he possibly can, whether there is a good cause of action or a bad cause of action, and I could not say whether she had a good cause of action or not.

Q. Would you represent a bad cause of action to the Court?

A. I think I would represent a bad cause of action to the best of my ability—to represent it as an attorney. If I was employed to represent a person's interests, I would protect their interests as well as I could.

Q. You would not introduce untrue testimony to bolster up your case, would you?

A. I certainly would not, but I don't suppose there is any lawyer employed in cases but what he believes his client has the right of the cause, and he represents the client's interests and protects them as far as he can.

Q. But you are not bound to bolster up a case?

A. No, sir.

Q. And you did not do that in these cases?

A. No, sir, I had no intention of doing it. Whether Mr. Wood or Mrs. Plough was right in the controversy, I would not undertake to say.

(Testimony of W. T. Hume.)

Q. Both cases involved the same proposition, whether for the plaintiff or for the defendant?

A. It was a very complicated proposition in reference to right of possession to a piece of ground, as to which got a tent up first.

Q. Before you commenced the action of Plough vs. Wood, Mrs. Plough stated the cause of action to you as best she could—I take it that she did, because in that case you would ask her to swear to a complaint, and you asked her about the state of facts, didn't you?

A. Personally, I knew very little about the facts. Those cases were begun by Mr. Beeman. He was the attorney in those cases in the summer of 1899 and the winter of 1900, up to the time he left. I took the cases simply because I was a member of the firm. Personally I knew very little about the facts at the time.

Q. You didn't know very much about the facts in the case?

A. Very little, and that is the reason why I would not state whether Mrs. Plough had the right of the controversy, or whether she did not.

Q. Now, the case of Osborn vs. Fritz: I think we have not discussed that case this morning, or at all, except the former testimony given. Were you personally acquainted with that case—I mean were you familiar with the facts in that case? A. Yes, sir.

Q. And you represented whom?

A. Captain Osborn, the plaintiff.

Q. About when was that action commenced?

(Testimony of W. T. Hume.)

A. In July, 1900.

Q. And that involved a mining claim, did it?

A. No, sir.

Q. What did that involve?

A. That involved the possession of a building and a town lot; enforcing the terms of a written lease.

Q. That is the case in which Star and Gurney figured, is it? A. Yes, sir.

Q. Were Star and Gurney intervenors?

A. No, sir, they were grantees of Fritz; they were associated with Fritz.

Q. Fritz had the title? A. Fritz had the lease.

Q. Now, did you say that Wood was employed in that case?

A. No, sir, I don't think Mr. Wood appeared in that case; I don't recollect his appearing.

Q. Well, you represented the plaintiff. Who represented the defendant Fritz?

A. Mr. Fritz, at the time of the trial of the action, had no attorney. Mr. P. C. Sullivan and Mr. Geary represented the Star and Gurney interests.

Q. Mr. Sullivan and Mr. Geary represented the Star and Gurney interests? A. Yes, sir.

Q. And Mr. Fritz was not represented at all?

A. No, sir.

Q. That case was tried before a jury, wasn't it?

A. It was tried before a jury in the Justice's Court, and in the District Court we were nonsuited.

Q. That is, the Court directed a verdict?

(Testimony of W. T. Hume.)

A. Yes, sir.

Q. On motion of defendant's attorneys?

A. Yes, sir.

Q. Now, Fritz was on both sides of that case, I suppose; he was interested on both sides? A. No, sir.

Q. Which side was he interested on?

A. Well, I presume at the time of the last trial, his interest was really with Osborn.

Q. At the time of the first trial where was it?

A. At the time of the commencement of the action, or at the trial? At the time of the trial he was interested with Osborn.

Q. He was interested with Osborn at the trial, but at the commencement of the action where was he?

A. At the time of the commencement of the action, he was not interested with Osborn.

Q. He had changed his position, then, in the case, by lease or in some way?

A. No, sir, he and Osborn came together in some way or other, and I believe he and Osborn made some terms as to a portion of the property—an intervening deed after the commencement of the action, or a contract.

Q. I don't remember what you said about the case after there was a verdict directed. Was it further prosecuted? A. We have prosecuted an appeal.

Q. An appeal is pending?

A. Yes, sir, an appeal is pending from the judgment of the Court. The transcript has not arrived here, but I expect it any day, on appeal to the Circuit Court of Appeals, from the judgment.

(Testimony of W. T. Hume.)

Q. You have taken steps, or will take steps, to appeal from the order denying a new trial, I suppose, or from the judgment? A. From the judgment.

Q. And that will involve a bill of exceptions, or a settled case—I don't know which it is?

A. Yes, sir, a bill of exceptions.

Q. Has the bill of exceptions been signed?

A. I think so.

Q. And signed by Judge Noyes?

A. Yes, sir.

Q. Allowing the appeal—and in that record or transcript he stated the facts that transpired.

A. There are two appeals in the matter. One from the main case, and one from an order.

Q. Well, the facts are stated?

A. Yes, by stipulation. Mr. Sullivan and I stipulated that the Judge might sign the bill of exceptions on the last day that he left the city.

Q. And he did?

A. He did sign it under our stipulation.

Q. Both agreed it was correct?

A. We agreed in open court that he might sign it.

Q. And on your agreement—as is the practice in courts when a bill of exceptions is presented, and there is no objection to it, as a rule the Judge signs it when it is agreeable to both parties? A. Yes, sir.

Q. Now, we have the case of Blake vs. Lindeberg.

A. I think the correct title of that is Blake vs. Hagelin, Lindblom and Hultberg.

(Testimony of W. T. Hume.)

Q. In that case you were attorney for Blake?

A. Yes, sir.

Q. And Blake was the plaintiff? A. Yes, sir.

Q. When was that case commenced?

A. I think it was commenced during the month of August, 1900. I could not state the exact time.

Q. Did that involve mining property?

A. Yes, sir.

Q. I wish you would give me, if you can, the exact title of the case, and the names of all the parties.

A. The title as it appears on the docket is, H. L. Blake et al. vs. Hagelin et al,—I have forgotten Hagelin's initials.

Q. Now, who are the et als. of Blake?

A. Porter—I can't think of the other names. The case was known as Blake vs. Hagelin.

Q. Well, Lindeberg and Lindblom and Hultberg were interested in the cause?

A. They were the defendants.

Q. That, as I understand it, was the case that involved what is known as a grub-stake?

A. It was in the nature of a grub-stake or mining co-partnership.

Q. That was the case, as I understand it, where you say there was a demurrer to your complaint?

A. Yes, sir.

Q. And after argument, the demurrer was sustained?

A. It was overruled.

Q. The demurrer to your complaint was overruled?

A. Yes, sir.

(Testimony of W. T. Hume.)

Q. And then the defendants answered?

A. No, sir.

Q. What did they do?

A. The gentleman that succeeded me thought the complaint was not good, and filed an amended one.

Q. Who succeeded you? A. Mr. Bruner.

Q. This case was commenced when?

A. Commenced in the middle of August, or along during the month of August, 1900.

Q. Mr. Bruner thought that your complaint was not quite good enough, and he amended it?

A. He thought it ought to be amended, and he did amend it.

Q. This was August, 1900? A. Yes, sir.

Q. And he amended the complaint? A. Yes, sir.

Q. Then what happened?

A. Another demurrer came in.

Q. A demurrer to the amended complaint?

A. Yes, sir.

Q. And was that overruled?

A. I am not positive about that. I think that was sustained.

Q. Then, he amended the complaint sufficiently so that it was demurrable?

A. Yes, sir, I think so; and then I think there was another amended complaint.

Q. That was followed by another amended complaint, to which was interposed another demurrer?

A. Yes, sir. I don't know whether there were two or three amended complaints. After I withdrew, I did not

(Testimony of W. T. Hume.)

follow the proceedings. They were arguing demurrers there all winter.

Q. Was the complaint finally settled?

A. I think it was settled. The demurrer was overruled on the date that I made the affidavit, July 15, 1901.

Q. Now, had a receiver been appointed in this case?

A. No, sir.

Q. The question of receivership was not involved at all, was it?

A. I desired to apply for a receiver, and was unable to obtain a receiver unless I would agree to turn over my contract with Mr. Blake, and insist on their turning their interests in to Mr. McKenzie, and we absolutely declined to do it, and therefore we didn't get a receiver.

Q. You are now stating what you have stated two or three times in succession: You have stated that thing three times. The question could have been answered by your saying whether it was or whether it was not, but you took the opportunity—which you have repeatedly—of making an answer that you, as a lawyer, know—and if you are not a lawyer, you would know anyhow—that it was not responsive to the question, or proper.

Mr. PILLSBURY.—Mr. Commissioner, I object to the witness being lectured, and I respectfully submit and ask to have it go in the record that that was a proper answer. The question was that there was no receiver involved in the case, and he answered that there was.

Mr. McLAUGHLIN.—I ask also that it go into the record, and I respectfully ask so, and that it be sub-

(Testimony of W. T. Hume.)

mitted as being an improper answer, and one that should be stricken from the record. I understand, Mr. Pillsbury, you want that very question now submitted?

Mr. PILLSBURY.—You did not understand me correctly. I ask that the examination of the witness be concluded, or I will ask to have him discharged.

Mr. McLAUGHLIN.—Well, you can ask to have him discharged—no objection to that.

The COMMISSIONER.—Let us proceed with the examination. The matter is all in the record.

Mr. McLAUGHLIN.—Q. No receiver was appointed in that case, then? A. No, sir.

Q. Did you ever, in court, make an application for a receiver in that case?

A. I am not positive whether I did or not. My recollection is not clear whether we filed the application for a receiver or not.

Q. Give us the property that that involved.

A. I cannot do it from recollection.

Q. Well, as nearly as you can.

A. I can give it generally. It involved all the property that was located by Lindeberg, Brynteson and Hulteberg, and the property in which Lindeberg and Brynteson had an interest in the Nome Mining District, incidentally involving Lindblom's interest to that extent, he being their partner.

Q. Did it involve any of the property in which Alexander McKenzie had already been appointed receiver?

A. Yes, sir, it involved all of it.

(Testimony of W. T. Hume.)

Q. It involved all of it?

A. I think so. I will not be sure about that—no, I don't think it involved No. 2 Above Discovery—I will correct that; I am in error. It did not involve No. 2. Above Discovery, or No. 2 Below Discovery, or No. 10 Above Discovery, or No. 1 on Nakkeli Gulch. It involved Discovery Claim, and Dexter Creek Claims.

Q. But it did cover at least some of the property, if not all of the property, owned by these men, or claimed to be owned by them, on which there was any interest, where McKenzie had already been appointed receiver, other than the pieces of property you have mentioned?

A. It involved an interest in all the others.

Q. And McKenzie had already been appointed receiver? A. He had not.

Q. McKenzie had not? A. No, sir.

Q. Had anybody?

A. No, sir, there had been no receiver appointed.

Q. That covered any of this property, the subject of this action? A. Yes, sir.

Q. There had been? A. Yes, sir.

Q. That was Mr. McKenzie? A. Yes, sir.

Q. I say that Mr. McKenzie had already been appointed receiver in other actions that covered some of the property, the subject of this action?

A. I think three of the claims.

Q. You say you never applied to Judge Noyes in court for the appointment of a receiver in that case. Did you ever apply anywhere to Judge Noyes for the appointment of a receiver in that case?

(Testimony of W. T. Hume.)

A. I say I don't recollect; my recollection is not clear whether we filed our papers for the appointment of a receiver in that case, or not. That is as clear as I can make my answer. I certainly did not apply to him at any other place, excepting in court.

Q. Now, Mr. Hume, I will ask you your age?

A. Forty-two years to-day.

Q. And you have been practicing law how long?

A. I was admitted in 1884, and practiced off and on since that time.

Q. You have been engaged in active practice for how many years?

A. I say I have practiced on and off since 1884. I started an office on my own account in 1885.

Q. And you have practiced before the courts in the State of Oregon?

A. I have practiced before the courts in the State of Oregon, and in Washington, and in Alaska, and in the United States Courts in California.

Q. This court here?

A. The Circuit Court of Appeals.

Q. You have been engaged, then, in practicing before all the courts in the State of Oregon, State and Federal?

A. I have been engaged in practice in the State and Federal courts.

Q. And in the Supreme Court of that State?

A. And in the Supreme Court of that State.

Q. And you have also been engaged in practice in the State of Washington?

(Testimony of W. T. Hume.)

A. I have tried cases in the State of Washington—I mean the territory of Washington.

Q. And you have taken an active interest in public affairs in both of the States, and particularly in the State of Oregon?

A. I have been interested in public affairs in the State of Oregon to some extent.

Q. Have you held any public offices in the State of Oregon? A. I have.

Q. What offices have you held there?

A. I have held the office of representative of Multnomah county in the lower house of representatives, in the State of Oregon.

Q. For how long? A. Two years.

Q. What other office?

A. Deputy district attorney for two years, and district attorney for four years, of the fourth judicial district of Oregon.

Q. How long did you hold that office?

A. I was deputy district attorney for two years, and district attorney for four years.

Q. At the time you commenced the action of Chipps vs. Lindeberg, and the other action on the 23d day of July, 1900, did at that time have a retainer from Mr. Lindeberg, a general retainer from Mr. Lindeberg, the defendant in that case?

A. At that time I did not.

Q. Had you prior to that time been retained by Mr. Lindeberg, and had he paid you a retainer—I mean prior to that time.

(Testimony of W. T. Hume.)

A. Yes, and no. I will say yes—not from Mr. Lindeberg.

Q. Who was it?

A. The Pioneer Mining Company.

Q. The Pioneer Mining Company, in which Mr. Lindeberg was interested? A. Yes, sir.

Q. Very largely interested, wasn't he?

A. Yes, sir.

Q. Now, the Pioneer Mining Company claimed to own these claims, the subject of these actions?

A. The Discovery Claim.

Q. The Pioneer Mining Company was a corporation, I suppose?

A. I don't know what it was. I think it was a partnership, but I am not positive about that. We didn't have any laws in Alaska at that time to amount to anything.

Q. Well, it was some kind of an organization, I suppose?

A. Yes, it was some kind of an organization.

Q. Had not Mr. Lindeberg, some time before that time, paid you the sum of $300 as a general retainer, either on behalf of that company or on his own behalf, and had not you at that time given a receipt for the money to Mr. Lindeberg, in which you stated that it was paid and accepted by you as a general retainer?

Mr. PILLSBURY.—If you have any receipt, it should be produced.

Mr. McLAUGHLIN.—May I not ask the question?

(Testimony of W. T. Hume.)

Mr. PILLSBURY.—I don't think the witness should be interrogated about a writing unless it is first shown to him.

Mr. McLAUGHLIN.—You have been reading from the records here all the morning.

Mr. PILLSBURY.—Well, that is what I want you to do, to produce the writing.

Mr. McLAUGHLIN.—You haven't made this a matter of public record yet, but I have no doubt you will publish it.

Mr. PILLSBURY.—Well, I will publish what I think is proper.

Mr. McLAUGHLIN.—Yes, and so will we.

Mr. PILLSBURY.—I desire to say to the witness that I don't think he is required to answer concerning any paper, unless it is produced for his inspection before he answers it. If they have any such paper, it should be submitted.

Mr. McLAUGHLIN.—This is a lawyer himself on the stand. We have the spectacle of one lawyer advising another as to what he should or should not answer. This witness is a lawyer, and a lawyer of ability, and it seems to me he is advised of his rights in the premises, and he ought to be permitted to exercise that right freely, and without let or hindrance.

Mr. PILLSBURY.—Well, I am perfectly willing you should have your opinion about it.

(Testimony of W. T. Hume.)

Mr. HENEY.—I suppose Mr. Pillsbury's objection is made solely because he is a friend of the court.

Mr. PILLSBURY.—I don't think that that remark is called for, but I am not acting in any other capacity.

The COMMISSIONER.—Gentlemen, let us get along with the examination. The objection is in the record.

Mr. McLAUGHLIN.—I have put a question, and I cannot do anything more than ask the question.

Mr. PILLSBURY.—Well, you are talking considerably about it.

Mr. McLAUGHLIN.—I am only half answering the suggestions put out by you.

A. The contents of the paper referred to, I could not testify to at this date. Mr. Lindeberg has never paid me any money on his own account, or on account of anybody else, as a retainer.

Q. Did he, on the part of the Pioneer Mining Company, pay you a retainer?

A. No, sir, Mr. Lindeberg did not.

Q. Did anybody else? A. Mr. Brynteson did.

Q. Was it on Mr. Brynteson's part, or on the part of the Pioneer Mining Company?

A. I will explain to you the circumstances you are evidently misinformed about. In the summer of 1899, there were probably two or three thousand people living in Nome in tents. We had no courts, and very little law; it was under military control. Mr. Brynteson called at my tent one day, and said he understood I was

(Testimony of W. T. Hume.)

a lawyer, that he had been informed by a gentleman who was acquainted with me, and he said it might be necessary for him to consult me with reference to some matters. He had counsel in the town, but he might at some time desire to ask my advice, or to associate me with the gentlemen whom they had employed, and on behalf of the Pioneer Mining Company he desired to pay me $300 as a retainer. I received the money, and gave a receipt for it according to our agreement. It was not money; it was gold-dust. I received the gold-dust, and gave a receipt for it. During the fall of 1899, I was relieved from my obligation under this retainer by the Pioneer Mining Company, and have had no relations with them since that time. The services I performed in 1899, and prior to the arrival of the court; I was entirely relieved of any obligation or relation with the Pioneer Mining Company, on account of my being attorney for other parties whose interests they thought were antagonistic to them, and that is all the money ever received by me from the Pioneer Mining Company under any circumstances.

Q. In what particular way did the Pioneer Mining Company release you from the contractual obligations that rested upon you by reason of your retainer?

A. They told me they didn't want my services any longer; I could consider myself discharged.

Q. They were not satisfied with what you were doing?

A. I was attorney for Webster, No. 1 Nakkeli; Mel-

(Testimony of W. T. Hume.)

sing in No. 10 Above on Anvil; Mr. Watterson in No. 11 Above on Anvil; and Mr. Rogers on No. 2 Below Discovery; and they thought that my relations with these gentlemen would place me in a position that I could not consistently act for them, and they simply discharged me.

Q. And you acquired that interest subsequent to the acceptance of a retainer from the Pioneer Mining Company? A. No, sir, not all of them.

Q. Some of them?

A. Yes, sir, but their interests were not antagonistic.

Q. And at the time you accepted the retainer, you had this antagonistic claim to the parties that retained you?

A. No, sir; I did not have any antagonistic claim to them, and Mr. Brynteson was advised at the time I accepted the $300 that I was the attorney for these people.

Q. They were advised of that by you, were they?

A. Yes, sir, they knew it.

Q. And notwithstanding the fact that they knew you were the attorney for other people, they retained you, and you permitted yourself to be retained, on the payment of $300?

A. Their interests were not antagonistic at all in any way.

Q. The Pioneer Mining Company thought they were, and as soon as they ascertained it, they discharged you; is that right? A. No, sir, they did not.

Q. I thought you said a minute ago they did.

(Testimony of W. T. Hume.)

A. No, sir.

Q. What did you say?

A. I said prior to the time that Judge Johnson arrived there in the fall of 1899, Mr. Brynteson discharged me, saying he thought my relations to these other people were such that I would not be a satisfactory representative of them, or that these other people's interests might be antagonistic to theirs. It was not done as soon as he ascertained it; he knew it all the time. He changed his mind with reference to retaining me any longer. The relations were friendly, there was no ill-feeling between us. He simply thought that perhaps I might not be in a position where I would be as free to represent him as I would if I hadn't accepted retainers from the other people, and I was relieved.

Q. He simply thought, in a case in which he was interested, that you could not successfully, or at least satisfactorily, represent both sides?

A. No, sir, that was not the question. He felt, perhaps, I might be embarrassed in representing him and representing the other clients. I think there is hardly any attorney but what has had the same experience.

Q. In Nome?

A. In any city, if they had much practice.

(At this hour of 12 o'clock M., the Commissioner, with the consent of counsel, ordered a recess to be taken until 2 'clock P. M.)

(Testimony of W. T. Hume.)

Afternoon Session.

Present: The Commissioner, the official reporter, and counsel for the respective parties.

W. T. HUME, further redirect examination.

Mr. PILLSBURY.—Q. You were asked on your cross-examination as to the appointment of receiver in certain cases other than those in which the receiver was appointed on July 23, 1900, as to whether, in your opinion, receivers were proper in those cases. You answered that they were. I will ask you if they were proper. Was there any reason why they should not be speedily appointed?

A. There was no reason why they should not have been appointed that I know of, upon the application, if the showing was sufficient.

Q. State if there was any delay about the appointments. A. There was delay.

Q. State the circumstances of that delay, and what, if anything, occurred prior to the final appointments.

Mr. McLAUGHLIN.—We object to that as incompetent, irrelevant, and immaterial, and as tending not only to bring in collateral matter, but the introduction of sub-collateral matter.

A. The appointments were delayed by demands that were made upon our firm by Mr. McKenzie as a prerequisite to the making of the order of appointment upon a showing I deemed to be proper. The delay in making the order was by reason of demands made by McKenzie, who held up the appointment until they were acceded to.